

Exhibit “B”

Kerry V. Nelson - April 22, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JESSICA PEREZ, INDIVIDUALLY AND)	
AS NEXT FRIEND OF KEEGAN)	
HILLSMAN AND MORGAN HILLSMAN,)	
MINOR CHILDREN)	
)
vs.)	No. 5:19-CV-00375
)
ALVIN BOECKEN AND JIM BALLARD)	
D/B/A CAB TRANSPORT)	
_____)	

VIDEOTAPED DEPOSITION OF KERRY V. NELSON

Payson, Arizona

April 22, 2020

Prepared By:
Karen L. Locker, RPR
Certified Reporter #50821

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<p>1 MR. FINLEY: I agree to the same.</p> <p>2 MR. FISCHER: Okay.</p> <p>3 BY MR. FINLEY:</p> <p>4 Q. Mr. Nelson, please state your full name for the</p> <p>5 record.</p> <p>6 A. Kerry V. Nelson.</p> <p>7 Q. Mr. Nelson, I believe, and correct me if I'm</p> <p>8 wrong, you've given a deposition before.</p> <p>9 A. Yes.</p> <p>10 Q. Okay. I know this is not your first time to do</p> <p>11 a deposition. It may be one of your first times to do one</p> <p>12 in a Zoom setting such as we're in today, and doing it</p> <p>13 completely remotely, but I know you've given a deposition</p> <p>14 before. Because of that I won't take as much time as I</p> <p>15 typically would with the witness to go through a bunch of</p> <p>16 different ground rules that I'd like for you and I to have</p> <p>17 an understanding on here today, but I will remind you that</p> <p>18 you are under oath giving sworn testimony in this lawsuit</p> <p>19 here today, and you understand that what you testify to</p> <p>20 can and may be read back to the jury at the time of trial</p> <p>21 as well as the video of your deposition.</p> <p>22 A. I understand.</p> <p>23 Q. Okay. You understand that I, I represent the</p> <p>24 defendants, Alvin Boecken and Jim Ballard, in this</p> <p>25 lawsuit?</p>	<p>1 Would you like the address?</p> <p>2 Q. Please. Please.</p> <p>3 A. 180 East Ezell, E-Z, as in zebra, E-L-L, Lane,</p> <p>4 Payson, Arizona, 85541.</p> <p>5 Q. Was that mason or -- was that with an M?</p> <p>6 A. No. P-A-Y -- P as in Paul, A-Y-S-O-N.</p> <p>7 Q. Got you.</p> <p>8 And you have your own business. Is that</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. What's the name of that business.</p> <p>12 A. Commercial Vehicle Forensics.</p> <p>13 Q. And where is the, what is the principal place of</p> <p>14 business for you, the business location?</p> <p>15 A. At that address I just gave you.</p> <p>16 Q. Okay. Mr. Nelson, how old are you today?</p> <p>17 A. Oh, let's see. 75.</p> <p>18 Q. Okay. Your date of birth?</p> <p>19 A. 11/17/45.</p> <p>20 Q. Mr. Nelson, are you a registered professional</p> <p>21 engineer in any state?</p> <p>22 A. I am not.</p> <p>23 Q. Have you ever been?</p> <p>24 A. No, sir.</p> <p>25 Q. Mr. Nelson, did you attend high school?</p>
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<p>1 A. Yes.</p> <p>2 Q. Okay. As we go along here today please let me</p> <p>3 know, especially in light of the circumstances and the</p> <p>4 fact that we're taking this deposition remotely, if you do</p> <p>5 not hear or understand any of the questions that I ask</p> <p>6 you.</p> <p>7 A. I'll do that.</p> <p>8 Q. If there is anything that you simply do not</p> <p>9 understand because I spoke too softly, we had a</p> <p>10 disconnection, you know, with our remote circumstances, or</p> <p>11 the phrasing was confusing please ask me to repeat it.</p> <p>12 I'll be glad to do so. Otherwise, I will assume that you</p> <p>13 understood the question as asked and take the answer as</p> <p>14 given.</p> <p>15 A. Okay.</p> <p>16 Q. If you need to take a break today for any reason</p> <p>17 please let me know and I'm glad to take a break and to be</p> <p>18 able to get through this in a timely fashion here today.</p> <p>19 A. Okay.</p> <p>20 Q. The only thing I ask in return is if there's a</p> <p>21 question on the table is to please answer that before we</p> <p>22 take a break.</p> <p>23 A. All right.</p> <p>24 Q. Mr. Nelson, where do you currently reside?</p> <p>25 A. I reside in Payson, Arizona.</p>	<p>1 A. I did.</p> <p>2 Q. Where did you attend?</p> <p>3 A. In a place called Camelback High School in</p> <p>4 Phoenix, Arizona.</p> <p>5 Q. And did you graduate from there?</p> <p>6 A. I did.</p> <p>7 Q. And what year did you graduate?</p> <p>8 A. 1963.</p> <p>9 Q. Did you attend any type of secondary education</p> <p>10 after that?</p> <p>11 A. Two years of college.</p> <p>12 Q. And where was that at?</p> <p>13 A. One year at Northern Arizona University and one</p> <p>14 year at Phoenix College.</p> <p>15 Q. And why don't we go ahead, then, and just attach</p> <p>16 right now as an exhibit to your deposition your CV. That</p> <p>17 will be Exhibit No. 1.</p> <p>18 (Exhibit 1 was marked for identification.)</p> <p>19 MR. FINLEY: And then is the, if we can -- can</p> <p>20 the CV be displayed?</p> <p>21 THE VIDEOGRAPHER: Yes, sir. Just a moment.</p> <p>22 MR. FINLEY: Sure.</p> <p>23 BY MR. FINLEY:</p> <p>24 Q. Mr. Nelson, can you see a copy of your CV on the</p> <p>25 screen in front of you?</p>

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1 A. Yes, sir.
2 Q. Okay. You may have a hard copy there in front
3 of you as well. I don't know, but I'm looking at your CV
4 right now. We're talking about education, and you said
5 you had one year of undergraduate work at Northern
6 Arizona, and then you said one year at Phoenix College,
7 correct?
8 A. Yes, sir.
9 Q. Now, I'm looking at your CV, and that one year
10 at Northern Arizona you write on there, you identify there
11 that your curriculum was mechanical engineering.
12 Was that a major that you had at that time?
13 A. Yes.
14 Q. All right. And then, again, at Phoenix College
15 you identify the curriculum again as mechanical
16 engineering.
17 Was that your major at Phoenix College?
18 A. Yes, sir.
19 Q. All right. Did you obtain any type of a degree
20 from Northern Arizona University?
21 A. I did not.
22 Q. Did you obtain a degree of any kind from Phoenix
23 College?
24 A. I did not.
25 Q. All right. Your education section of your CV

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1 shows two years, 1964 to '66, at Phoenix College, and you
2 had told me one year. I just want to clarify that with
3 you now.
4 Is it one or two years at Phoenix College?
5 A. That should be -- it's probably an error,
6 because I have '63 to '64 Northern Arizona University.
7 I'm sorry. Two years at Phoenix College, yes, sir. Three
8 years of college --
9 Q. Okay.
10 A. -- instruction total. I'm sorry. I'm --
11 Q. That's okay. I just want to make sure I'm on
12 the same page with you.
13 Aside from mechanical engineering being your
14 major at both of those colleges did you have any other
15 majors or minors that you were focused in at that time?
16 A. No.
17 Q. Aside from the education listed on your CV,
18 Mr. Nelson, have you attended any other types of colleges,
19 junior colleges, community colleges, anything of that
20 nature?
21 A. No.
22 Q. All right. Have you obtained, to date, any type
23 of degree based in engineering?
24 A. I have not.
25 Q. To date, have you obtained any type of a degree

08:47:05-08:48:21 Page 12

1 at all?
2 A. No, sir.
3 Q. So then I take it, and correct me if I'm wrong,
4 there would not be any type of postgraduate secondary
5 education in your background, correct?
6 A. Correct.
7 Q. Mr. Nelson, have you taught any courses in the
8 past?
9 A. Can you expand on that a little bit?
10 Q. Yeah, I can. I'll break it down for you.
11 Have you taught any courses in a, in a school
12 setting of any kind, like a university, a junior college,
13 community college, anything like that?
14 A. Not in a college environment, no.
15 Q. Okay. I take it from your answer you have
16 taught, though. Is that correct? Is that what you're
17 alluding to?
18 A. Yes.
19 Q. Okay. What have you -- where have you taught?
20 A. Well, it would be the SOS truck driving school.
21 I was an instructor in that school for a little shy of ten
22 years.
23 Q. Okay. And have you taught anywhere else besides
24 the SOS truck driving school?
25 A. We'll, I suppose you could look at it as a

08:48:24-08:50:03 Page 13

1 teaching position. I was Pepsi Cola's chief training
2 instructor for two different occasions in the past,
3 instructing individuals on how to operate a
4 tractor-trailer.
5 Q. And which years were you in that position at
6 Pepsi?
7 A. Oh, let's see, I probably need to get my CV on
8 the screen. 1985 to 1995 for the truck driving school,
9 and I don't have a date for instructor position at Pepsi
10 Cola, but it was during the early '90s, '90, '91,
11 somewhere in there.
12 Q. Okay. And just so I'm on the same page with
13 you, sir, the SOS truck driving school that you referred
14 to earlier, is that on your CV?
15 A. Yes.
16 Q. Okay. Which page is that on?
17 A. It's under D&A Consultants.
18 Q. Okay. So when you have SOS Big Rig Driver
19 Training that's what you're referring to?
20 A. Yes, sir.
21 Q. All right. And then the Pepsi Cola position
22 you're saying is or is not on your CV?
23 A. It is. It's right above that line, driver
24 training instructor for Pepsi Cola.
25 Q. Okay. You're just saying you don't have a year

<p>08:50:06-08:51:17 Page 14</p> <p>1 on there?</p> <p>2 A. Correct. But if I remember right --</p> <p>3 Q. That's what I --</p> <p>4 A. -- somewhere around '90 or '91.</p> <p>5 Q. Okay. Aside from those two positions would you</p> <p>6 describe your prior experience as a, as a teacher in any</p> <p>7 other fashion?</p> <p>8 A. No.</p> <p>9 Q. Okay. Now, we talked about this earlier,</p> <p>10 Mr. Nelson, but you have your own company currently that's</p> <p>11 Commercial Vehicle Forensics. Is that right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And you've had that from September 2016 to the</p> <p>14 present?</p> <p>15 A. Yes, I have.</p> <p>16 Q. All right. Do you have any employees working</p> <p>17 for you, or do you solely operate that by yourself?</p> <p>18 A. I'm by myself.</p> <p>19 Q. Okay. And has it been that way since you</p> <p>20 started?</p> <p>21 A. Yes, sir, it has.</p> <p>22 Q. Okay. And what do you do with that company</p> <p>23 itself? What are your -- what's your role with that</p> <p>24 company? What type of service do you provide?</p> <p>25 A. Well, it hasn't changed much over the years.</p>	<p>08:52:46-08:53:56 Page 16</p> <p>1 compliance with the Federal Motor Carrier Safety</p> <p>2 Regulations, their maintenance shop, if they had one, and</p> <p>3 what their scheduling, make sure their scheduling complied</p> <p>4 with regulation, and things of that nature.</p> <p>5 Q. How long did you do that before it solely, your</p> <p>6 consulting work solely focused on litigation matters?</p> <p>7 A. Well, that would have been when I was employed</p> <p>8 by D&A Consultants both times.</p> <p>9 Q. Okay.</p> <p>10 A. Also when I was employed by Ruhl Forensics and</p> <p>11 Evidence Solutions.</p> <p>12 Q. All right. Now, Evidence Solutions is the next</p> <p>13 company down on your CV. You have that listed from being</p> <p>14 from March 2014 to September 2016.</p> <p>15 Did you own and operate that business as well?</p> <p>16 A. No.</p> <p>17 Q. Okay. What was your title with that company?</p> <p>18 A. I was an employee.</p> <p>19 Q. Okay. The description you just gave me with</p> <p>20 regards to the type of consulting work you've done in the</p> <p>21 past and nonlitigation, in a nonlitigation context, did</p> <p>22 you do that with Evidence Solutions?</p> <p>23 A. Sometimes, yes.</p> <p>24 Q. Okay. Did you also do work related to</p> <p>25 litigation matters with Evidence Solutions?</p>
<p>08:51:20-08:52:41 Page 15</p> <p>1 The services I provide are services that render itself to</p> <p>2 litigation issues concerning vehicle collisions and,</p> <p>3 namely, commercial vehicle collisions.</p> <p>4 Q. Okay. And do you hold yourself out to be a</p> <p>5 consultant in that fashion?</p> <p>6 A. I do.</p> <p>7 Q. Okay. Your consulting work that you do for</p> <p>8 Commercial Vehicle Forensics, is it solely tied to</p> <p>9 litigation based matters?</p> <p>10 A. Yes. Now --</p> <p>11 Q. And -- go ahead.</p> <p>12 A. -- nowadays it is.</p> <p>13 Q. Okay. Was there a point in time -- let me ask</p> <p>14 it this way.</p> <p>15 You say nowadays. Is nowadays, when you say</p> <p>16 that means September 2016 to the present or a different</p> <p>17 time frame?</p> <p>18 A. I would agree to that. Before that there were</p> <p>19 other consulting positions that I performed.</p> <p>20 Q. Okay. And what would those be?</p> <p>21 A. That would be, as an example, let's say an</p> <p>22 insurance company wants to insure a trucking company.</p> <p>23 They would call us, and us being the prior companies I</p> <p>24 worked for, to go into the trucking company and examine</p> <p>25 their operation in terms of driver qualification, their</p>	<p>08:53:57-08:55:28 Page 17</p> <p>1 A. Yes.</p> <p>2 Q. Does that generally describe the type of work</p> <p>3 you performed for that company?</p> <p>4 A. Well, generally, yes. I mean, it's, you know,</p> <p>5 when you start analyzing cases, or start consulting in</p> <p>6 trucking companies, you know, there's lots of different</p> <p>7 areas down underneath that. But generally, yes, I would</p> <p>8 agree.</p> <p>9 Q. Okay. And by that, when I say generally, I mean</p> <p>10 you told me about the context of consulting on behalf of,</p> <p>11 say, an insurance carrier as your client for a trucking</p> <p>12 business in addition to consulting in a litigation</p> <p>13 context. That's what I was referring to when I said</p> <p>14 generally.</p> <p>15 A. Okay. I'll agree to that.</p> <p>16 Q. Okay. Now, the next company down is D&A</p> <p>17 Consultants in Phoenix. And you mentioned working for</p> <p>18 them on two separate occasions.</p> <p>19 What specific work did you do for D&A</p> <p>20 Consultants?</p> <p>21 A. Well, let me preface this answer by saying that</p> <p>22 D&A Consultants the first time around was the first place</p> <p>23 I worked after I got out of the Navy, and D&A Consultants</p> <p>24 was my introduction into the litigation analysis area,</p> <p>25 working for both defense and plaintiff attorneys. Also,</p>

<p>08:55:33-08:56:55 Page 18</p> <p>1 at that time, the owner of D&A Consultants owned the 2 trucking company that I became an instructor in. And also 3 during that time I was the training instructor for Pepsi 4 Cola on two different occasions, along with other 5 responsibilities such as consulting with trucking 6 companies or businesses in the commercial vehicle area, 7 things of that nature, along with, of course, 8 investigating and reconstructing commercial vehicle 9 collisions. 10 Q. Okay. So I have from you then that with D&A 11 Consultants that was your introduction into the litigation 12 field. You were an instructor for a trucking company. 13 You consulted, as well, as we have discussed, in that 14 litigation context and nonlitigation context, and then you 15 said during that time frame you also was, were a training 16 instructor for Pepsi. 17 A. Yes, sir. 18 Q. Okay. Now, D&A Consultants, was that owned by 19 Don Asa? 20 A. Correct. 21 Q. And I see also on your CV you worked for a 22 Bashas', Inc., worked for them for two years. Is that 23 correct? 24 A. Well, that was while I was with D&A Consultants. 25 That was another, another job aspect that -- only because</p>	<p>08:58:21-08:59:31 Page 20</p> <p>1 Q. How many states did you drive in for Bashas', 2 Inc.? 3 A. It would be, generally, Arizona and California. 4 Q. Okay. So the work that you performed, and 5 correct me if I'm wrong, as I understand it, would it be 6 delivering the groceries from the warehouse to the grocery 7 store? 8 A. Yes. 9 Q. Okay. Were there any other driving duties 10 besides that? 11 A. No. 12 Q. Besides driving for Bashas', Inc., in your past 13 have you driven for any other motor carrier? 14 A. I have not. 15 Q. I see also on your CV that you worked for the 16 Arizona Department of Public Safety for a period of time. 17 Did you ultimately retire from the Department of 18 Public Safety? 19 A. No. I resigned. 20 Q. Okay. While you were with the Department of 21 Public Safety did you have any type of disciplinary action 22 taken against you? 23 A. No. 24 Q. Were you ever suspended for any reason while 25 working with them?</p>
<p>08:57:00-08:58:19 Page 19</p> <p>1 Don Asa was the safety director at Bashas' and another 2 company called Western Produce which Bashas' owned at the 3 time. So -- 4 Q. Now -- go ahead. 5 A. From time to time I'd drive a tractor-trailer 6 for them picking up groceries throughout the state of 7 California, Nevada, and such, as a casual driver. And 8 casual driver meant that, let's say one of their employee 9 drivers was on sick leave and they needed a load to go 10 out, they'd had call over to D&A Consultants and one of 11 two of us that did this would then go over and drive a 12 truck and deliver groceries. 13 Q. And you worked in that fashion for two years? 14 A. Yes. 15 Q. Okay. Bashas', Inc. that you mentioned earlier, 16 is it a grocery delivering business? 17 A. Bashas' is a grocery store here in Arizona. 18 Q. Right. And so the work you did for them was to 19 drive a truck and deliver groceries? 20 A. Yes. 21 Q. All right. Was there a specific reason why that 22 only lasted for two years? 23 A. Well, I don't know if there was a specific 24 reason. That's just the time that they used me, in 25 particular, as a casual driver for the company.</p>	<p>08:59:32-09:00:51 Page 21</p> <p>1 A. No. 2 Q. Okay. I note on your CV that you identify 3 investigating commercial motor vehicle events or incidents 4 on there. 5 How much -- or what percentage of your work with 6 the Arizona Department of Public Safety involved 7 tractor-trailer related investigations? 8 A. Quite a bit because I was stationed on a major 9 highway in Arizona and it had a lot of heavy truck traffic 10 at the time. 11 Q. Can you approximate what you mean by quite a 12 bit? 13 A. Well, the truck drivers, the trucking companies 14 would either use Interstate 8, US 60, or Interstate 40 for 15 truck traffic. And so, of those three passageways, I was 16 on US 60. And truck traffic, of course, was heavy on that 17 road because there were only three, three roads to the 18 west coast coming through Arizona. 19 Q. So, Mr. Nelson, are you able to approximate the 20 percentage of your work that involved tractor-trailer 21 investigations? 22 A. No, I can't. I can tell you that there were a 23 lot of wrecks on US 60 involving commercial vehicles. 24 And, in fact -- 25 MR. FINLEY: Object to nonresponsive.</p>

<p>09:00:53-09:01:59 Page 22</p> <p>1 BY MR. FINLEY: 2 Q. So, just to be clear, you cannot approximate the 3 percentage? 4 A. No, I can't. You know, when you, when you're an 5 officer out on the, in the field and enforcing the laws 6 and investigating accidents on the highways it's hard to 7 approximate how many truck wrecks you had versus how many 8 motorcycle wrecks you had, versus how many passenger 9 vehicle wrecks you had and so forth. 10 MR. FINLEY: Object to nonresponsive after no, I 11 can't. 12 BY MR. FINLEY: 13 Q. With regards to your CV, Mr. Nelson, do you hold 14 an accreditation with ACTAR, so the Accreditation 15 Commission for Traffic Accident Reconstruction? 16 A. Not any more. 17 Q. Okay. Have you ever held that ACTAR -- and I'm 18 going to use that acronym just to make things easier -- 19 have you ever held the ACTAR certification? 20 A. I did. 21 Q. Okay. What period of time did you hold that 22 for? 23 A. While I was employed with Ruhl Forensics. 24 Q. All right. So can I -- is it fair for me to go 25 off of your CV, then, to say that you held it from 1995 to</p>	<p>09:03:24-09:04:48 Page 24</p> <p>1 Q. Okay. Why have you not renewed it since then? 2 A. Well, I have slowly got away from accident 3 reconstruction -- 4 Q. Okay. 5 A. -- after Ruhl Forensics. 6 Q. Now, I see here on your CV you identified 7 professional societies, different societies itself. 8 Are you currently a dues paying active member of 9 any of those societies on your CV? 10 A. I am not. 11 Q. Okay. With respect to the Arizona Trucking 12 Association when was the last time you were an active 13 member of that association? 14 A. I don't recall. 15 Q. Okay. With respect to the National Association 16 of Professional Accident Reconstruction Specialists when 17 was the last time you were an active member of that 18 association? 19 A. That's probably while I was with Ruhl Forensics, 20 as is Truckload Carriers Association and the National 21 Safety Council. 22 Q. Okay. So for those three societies or 23 associations that you just mentioned you have not been an 24 active member with those societies since 2003 at the 25 latest?</p>
<p>09:02:07-09:03:23 Page 23</p> <p>1 2003? 2 A. No. I think I received that certification 3 somewhere in '98 or '99, something like that. 4 Q. Okay. And then how long did you have that in 5 effect, or how long was that certification valid for? 6 A. I think it was until the time I left Ruhl 7 Forensics. 8 Q. So 1998 to 2003? 9 A. That's -- I would estimate that, yes. 10 Q. Okay. During that period of time, Mr. Nelson, 11 did you have to have the certification renewed, or was it 12 valid for the entire five years without renewal? 13 A. I think it was valid for the entire five years. 14 Q. Okay. When you got the certification initially 15 did you have to take any type of an examination and pass 16 it to get the certification? 17 A. Yes. 18 Q. Okay. Did you pass the exam on the first try? 19 A. I did. 20 Q. Okay. Is that the only time you've taken the 21 examination for the ACTAR certification? 22 A. Yes. 23 Q. Okay. And since 2003 you have not renewed that 24 certification? 25 A. That's correct.</p>	<p>09:04:48-09:06:06 Page 25</p> <p>1 A. Yes. 2 Q. Okay. And I believe the final one on here would 3 be the Southwestern Association of Technical Accident 4 Investigators. 5 Are you currently an active member of that 6 association? 7 A. No, I am not. 8 Q. Okay. And when were you last an active member 9 of that association? 10 A. While I was employed with Evidence Solutions. 11 Q. So that would have been as of 2016? 12 A. Yes. 13 Q. Okay. The, the memberships or societies that 14 you listed on here, and correct me if I'm wrong, but it 15 sounds like from your testimony memberships that you note 16 on your CV, or prior memberships I should say, were tied 17 to your employment with Ruhl Forensics as well as Evidence 18 Solutions, correct? 19 A. Yes. 20 Q. And by that I mean were you individually a 21 member or were you a member associated with your firm or 22 company being a member to that society? 23 A. I think two of those -- the Arizona Trucking 24 Association, the Truckload Carriers Association, and the 25 National Safety Council were all firm memberships.</p>

<p>09:06:10-09:07:23 Page 26</p> <p>1 Q. Okay. And so it should say firm membership, 2 then, on your CV for Truckload Carriers Association as 3 well? 4 A. Yes. 5 Q. All right. Would it not be more accurate, then, 6 on your CV to indicate that you're no longer in those 7 societies -- 8 A. That would be correct. 9 Q. -- so it accurately represents what your society 10 membership is or is not? 11 A. Yes. 12 Q. Okay. Do you hold any certification, brake 13 certifications? 14 A. Other than going to a brake school -- in fact, 15 other training and seminars I have listed as Air Brake 16 Consultants Seminar of the Arizona Trucking Association. 17 Q. Okay. So the answer -- the original question, 18 then, do you hold any certification, brake certifications? 19 A. None from other than one from attending that 20 seminar. 21 Q. Okay. And I have got your CV here in front of 22 me on what is going to be the fourth page of it, or 23 starting on the third going into the fourth. 24 Can you refer me to which seminar you're talking 25 about?</p>	<p>09:08:25-09:10:12 Page 28</p> <p>1 left there with the understanding of a braking system. 2 Q. Is that certification, beyond saying that you 3 went to the school, is it some type of a certification 4 that you have currently active that had to be renewed over 5 time? 6 A. No. Not at all. 7 Q. Okay. Now, your, your CV talks about, under 8 publications, editorial duties for the Truck and Trucking 9 Handbook with Ruhl and Associates. 10 What did you do specifically? What were your 11 editorial duties? 12 A. It was a publication originated by Ruhl 13 Forensics, or the staff at Ruhl Forensics. They wanted an 14 update from a book that Don Asa had published some years 15 back. So, along with myself, Don Asa and another employee 16 at Ruhl Forensics sat down and created the 17 tractor-trailers -- I'm sorry -- the, the Truck and 18 Trucking Handbook for Ruhl Forensics to be edited and 19 published for various attorney firms. 20 Q. Okay. Were these attorney firms clients of Ruhl 21 Forensics or Ruhl Associates? 22 A. Yes. Both plaintiff and defense. 23 Q. And your duties with respect to editing, did you 24 actually write or have a hand in writing the handbook, or 25 just editing the content of the book?</p>
<p>09:07:23-09:08:21 Page 27</p> <p>1 A. It would be the Air Brake Consultant Seminar by 2 the Arizona Trucking Association. 3 Q. All right. And that -- I'm sorry. 4 A. Dealing with Bendix brake systems. 5 Q. I see that's the second item listed under other 6 training and seminars, correct? 7 A. Yes. 8 Q. And there's not a specific year or date for that 9 seminar. 10 When did that occur? 11 A. I don't remember. 12 Q. Okay. 13 A. I think it was while -- 14 Q. Do you have a -- 15 A. I think it was while I was with Ruhl Forensics. 16 Q. So sometime in the 1998 to 2003 period -- or '95 17 to '03 period? 18 A. Yes, sir. 19 Q. Okay. And, just to be clear, did you obtain any 20 type of a certification from attending that seminar, or is 21 that just a seminar you attended relating to brakes? 22 A. Well, you receive a certification after you 23 attend the seminar that you -- 24 Q. Okay. 25 A. -- that you, in fact, attend the seminar and</p>	<p>09:10:14-09:11:37 Page 29</p> <p>1 A. No. My job was to write different chapters of 2 the book. The editing was done by other staff members 3 before the book was finalized and published. 4 Q. How many other individuals had a hand in writing 5 the handbook besides yourself? 6 A. It would be Don Asa and an individual by the 7 name of Robert Coulter and myself. 8 Q. Okay. So you did not actually do the editing. 9 It sounds like you're telling me you're more of the 10 drafting side of that book? 11 A. Right. That's correct. Staff at Ruhl Forensics 12 edited the publication for us. 13 Q. Okay. Now, I see on your CV you have two 14 presentations identified in the past. 15 Both of those associations that you presented to 16 would those be plaintiff lawyer based associations? 17 A. Yes. 18 Q. Okay. Now, in your experience, Mr. Nelson, have 19 you become familiar with the title safety director in the 20 context of a motor carrier business? 21 A. Sure I have. 22 Q. Have you ever been a safety director before? 23 A. I have not. 24 Q. Have you ever been the vice president of safety 25 for a motor carrier company?</p>

09:11:39-09:13:00	Page 30	09:15:32-09:16:43	Page 32
<p>1 A. No.</p> <p>2 Q. Have you ever been a safety manager for a motor</p> <p>3 carrier company?</p> <p>4 A. No.</p> <p>5 Q. Have you ever been a safety supervisor for a</p> <p>6 motor carrier company?</p> <p>7 A. No.</p> <p>8 Q. In your past, working for motor carriers that</p> <p>9 you identified on your CV, that being Bashas', have you</p> <p>10 ever been responsible for hiring truck drivers?</p> <p>11 A. I have not. Not for Bashas'.</p> <p>12 Q. Okay. Have you been responsible for hiring</p> <p>13 truck drivers before for another company?</p> <p>14 A. I have not.</p> <p>15 Q. Okay. Now, earlier you talked about working for</p> <p>16 Bashas' and then for D&A Consultants.</p> <p>17 With respect to hiring truck drivers, if you</p> <p>18 have not run them before, I take it then you never had to</p> <p>19 make the decision to hire or not hire a driver based upon</p> <p>20 his MVR report?</p> <p>21 A. That's correct. Only in litigation.</p> <p>22 Q. In terms of evaluating decisions made by other</p> <p>23 companies? Is that what you're talking about?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. Now, in this particular lawsuit,</p>		<p>1 A. Well, the flat fee -- no. Hourly rate only.</p> <p>2 Q. Okay. And we had here identified as Exhibit 2</p> <p>3 in your deposition, Mr. Nelson, a copy of an invoice that</p> <p>4 you have provided here in this case.</p> <p>5 Is this the only invoice that's been submitted</p> <p>6 thus far for your work in this case?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. In looking at the invoice itself --</p> <p>9 Do you have a copy in front of you, Mr. Nelson?</p> <p>10 A. I do.</p> <p>11 Q. All right. I see here that you have a total of</p> <p>12 13 hours thus far that you billed for the case.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Beyond that 13 hours identified on that</p> <p>15 invoice is there additional time that you put into the</p> <p>16 case thus far not including your deposition time right</p> <p>17 now?</p> <p>18 A. It would probably be prep time, getting ready</p> <p>19 for deposition testimony.</p> <p>20 Q. Okay. How much prep time did you have for</p> <p>21 getting ready for the deposition?</p> <p>22 A. Oh, I would say six hours.</p> <p>23 Q. Okay. And, in addition to your time spent here</p> <p>24 in the deposition and those six hours, is there any</p> <p>25 additional work you've put into this file beyond that as</p>	
09:13:09-09:15:31	Page 31	09:16:47-09:23:28	Page 33
<p>1 Mr. Nelson, you were hired by counsel for the plaintiff to</p> <p>2 be a witness in this case. Is that correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. All right. And you expect to be paid for your</p> <p>5 services, I take it?</p> <p>6 A. I would hope so.</p> <p>7 Q. What is the payment arrangement that you have</p> <p>8 with counsel for plaintiff?</p> <p>9 A. Oh, boy. Hang on a minute.</p> <p>10 Q. Okay. And why don't we do this. Let's attach,</p> <p>11 it's going to be Exhibit 2 to this deposition, the invoice</p> <p>12 provided by Mr. Nelson.</p> <p>13 (Exhibit 2 was marked for identification.)</p> <p>14 THE WITNESS: Okay. The answer to your</p> <p>15 question, my arrangement with Mr. Fischel's office is that</p> <p>16 they will be billed at a rate of 325 an hour, and</p> <p>17 deposition testimony would be billed at 375 an hour with</p> <p>18 three hour minimum.</p> <p>19 BY MR. FINLEY:</p> <p>20 Q. Okay. And the deposition testimony hourly rate</p> <p>21 is that the same rate for trial testimony as well too if</p> <p>22 you have to testify at trial?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Is any of the work you're providing based on a</p> <p>25 flat fee schedule?</p>		<p>1 we see on Exhibit No. 2, your, this invoice?</p> <p>2 A. No. Not unless I'm asked.</p> <p>3 Q. Okay. The six hours of prep time, what did you</p> <p>4 do to prepare for the deposition?</p> <p>5 A. Reviewed the case file.</p> <p>6 Q. Okay. And we'll go through the contents of that</p> <p>7 here in a second.</p> <p>8 Did you do anything else besides reviewing the</p> <p>9 case file?</p> <p>10 A. No.</p> <p>11 MR. FINLEY: With respect to your case file can</p> <p>12 we attach the deposition notice for Mr. Nelson as</p> <p>13 Exhibit 3 to the deposition.</p> <p>14 (Exhibit 3 was marked for identification.)</p> <p>15 THE WITNESS: Would this be a good time to take</p> <p>16 a break, Mr. Finley?</p> <p>17 MR. FINLEY: That would be fine.</p> <p>18 THE VIDEOGRAPHER: We are going off the record</p> <p>19 at 9:18 a.m.</p> <p>20 (Recess taken from 9:18 a.m. to 9:23 a.m.)</p> <p>21 THE VIDEOGRAPHER: We are back on the record at</p> <p>22 9:23 a.m.</p> <p>23 BY MR. FINLEY:</p> <p>24 Q. All right. We're back on the record.</p> <p>25 Mr. Nelson, are you ready to proceed forward?</p>	

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1 A. Yes, sir.
2 Q. Before we got off the record we were going to
3 have pulled up I believe Exhibit No. 3 to your deposition
4 which is going to be the deposition notice for your
5 deposition here today.
6 A. Okay.
7 Q. And while that's being pulled up, Mr. Nelson, I
8 want to follow up with you on one more quick item. I
9 asked you earlier about the ACTAR certification related to
10 accident reconstruction and you answered some questions
11 related to that. Let me ask you this.
12 Do you hold any current certification related to
13 accident reconstruction?
14 A. No, sir.
15 Q. Okay. Was the ACTAR certification the last time
16 you held a certification of any kind related to accident
17 reconstruction?
18 A. Yes.
19 Q. And have you held any other certifications
20 besides the one from ACTAR in the past for accident
21 reconstruction?
22 A. No.
23 MR. FINLEY: Can we have the -- okay.
24 (Off the record discussion was held regarding
25 question from the Reporter regarding Exhibit No. 3.)

09:25:21-09:26:22 Page 35

1 BY MR. FINLEY:
2 Q. So, Mr. Nelson, looking, then, at Exhibit No. 3,
3 have you seen that before today, your deposition notice?
4 A. Yes, sir, I have.
5 Q. All right. Did you have a chance to review the
6 items requested in the subpoena duces tecum?
7 A. I did.
8 Q. All right. Did you respond and provide all
9 items requested on that subpoena?
10 A. Yes.
11 Q. Okay. If we could, Mr. Videographer, if we
12 could go to, I believe it's on, page three where the
13 subpoena begins.
14 And in looking at that, Mr. Nelson, do you have
15 available to provide your entire file pertaining to your
16 retention, the work you performed, item No. 1?
17 A. I do.
18 Q. All right. And before we went on the record
19 today, Mr. Nelson, because of the circumstances we're in
20 right now, everyone being remote, we went through the
21 items that you have in your file. Is that correct?
22 A. Correct.
23 Q. All right. And while we are on the record I'm
24 going to go through with you all those items to confirm
25 that is in fact what you have in your file.

09:26:24-09:27:54 Page 36

1 You have a letter from Mr. Fischel, the
2 plaintiff's attorney, from November 2019; you have two
3 depositions, one of Mr. Boecken, one of Ms. Perez, the
4 plaintiff; you have one invoice that we have gone over
5 here today; you have a copy of the police report for the
6 subject accident in this case; you have the defendants'
7 expert designation; you have a report from Andy Sievers;
8 and you have items or documents produced by the defendants
9 Bates labeled 1 to 118 and 155 to 161; you have a
10 deposition notice for your deposition here today; you have
11 three photographs of the plaintiff's vehicle; you have a
12 report authored by yourself, Kerry Nelson; and then you
13 have notes that hand -- or are your own notes that you
14 prepared for the work you did in this case.
15 Are those all the items in your file?
16 A. Yes, sir.
17 Q. All right. And am I correct, Mr. Nelson, that
18 you have that file available on a flash drive that you can
19 send to the court reporter in this case?
20 A. I can do that.
21 Q. All right. I'll ask that you send that flash
22 drive after the deposition here today to the court
23 reporter. And if we could have that collectively marked
24 as Exhibit 4 to the deposition.
25 Looking at the subpoena to your deposition,

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1 Mr. Nelson, No. 2, item No. 2, all documents and tangible
2 things, reports, models, or data compilations that have
3 been provided to, reviewed by, or prepared by you in
4 anticipation of your testimony, those would be contained
5 in your file we just went through.
6 A. Yes, sir.
7 Q. Okay. No. 3, all witness statements, diagrams,
8 and investigative reports that you've reviewed related to
9 your work in this case, that would be contained in your
10 file?
11 A. Yes, sir.
12 Q. All treatises -- or treaties, literature,
13 statutes, rules, and regulations, trade publications, and
14 manuals that you reviewed, referred to, or relied upon,
15 would that be contained in your file?
16 A. Well, not necessarily. I mean, I, you know, I
17 review the Federal Motor Carrier Safety Regulations from
18 time to time which is in my little green book such as
19 this, which I have --
20 Q. And you're referring -- go ahead. I'm sorry. I
21 cut you off.
22 A. Which I have handy to review when I'm going
23 through case files.
24 Q. All right. Is there any, is there any
25 literature, statutes, rules, or regulations that you have

09:29:11-09:30:35	Page 38	09:32:16-09:33:42	Page 40
<p>1 reviewed or relied upon for your opinions in this case</p> <p>2 besides the green book that you just showed us?</p> <p>3 A. I think the only other publication would be the</p> <p>4 Texas Commercial Motor Vehicle Driver's Handbook that I</p> <p>5 would refer to, which contains recommendations for</p> <p>6 commercial drivers.</p> <p>7 Q. Aside from those two publications any other</p> <p>8 publications that you reviewed or relied upon in this case</p> <p>9 for your opinions?</p> <p>10 A. No, sir.</p> <p>11 Q. All right. Item No. 5, all reports which you</p> <p>12 prepared including all diagrams, photographs, and other</p> <p>13 visual images, are those contained in the file that you</p> <p>14 will be providing in this case?</p> <p>15 A. Yes.</p> <p>16 Q. All of your handwritten notes and materials that</p> <p>17 you prepared, are those contained in the file that you're</p> <p>18 providing in this case?</p> <p>19 A. Yes.</p> <p>20 Q. Item No. 7, all correspondence between you or</p> <p>21 your personnel and the attorneys for the plaintiff,</p> <p>22 Jessica Perez, would those be, are all those contained in</p> <p>23 the file you're providing in this case?</p> <p>24 A. Yes.</p> <p>25 Q. With regards to item No. 7, Mr. Nelson, you</p>		<p>1 Q. Yes, sir, I am. If that's what signed</p> <p>2 retainer -- if you had just one retainer, agreement, or</p> <p>3 contract that's what I'm referring to.</p> <p>4 A. Yes. I have a signed contract.</p> <p>5 Q. Okay. I'm going to ask if you can provide that,</p> <p>6 as well, to the court reporter along with your entire file</p> <p>7 documents that you're putting on the flash drive.</p> <p>8 Will you do that, sir?</p> <p>9 A. Okay.</p> <p>10 Q. Okay. And we will leave a blank, then, for</p> <p>11 Exhibit No. 6 to be the signed retainer agreement you have</p> <p>12 with counsel for plaintiffs in this case.</p> <p>13 Mr. Nelson, do you have the ability while we are</p> <p>14 here today during the deposition to send that to the court</p> <p>15 reporter, to email it to her?</p> <p>16 A. Well, we can -- well, yes, I can email it to</p> <p>17 her. I'll need an email address.</p> <p>18 Q. Sure. When we take a break we'll go ahead and</p> <p>19 do that. Okay?</p> <p>20 A. Okay.</p> <p>21 Q. All right. Going back, then, Mr. Nelson, I'll</p> <p>22 refer you back to Exhibit No. 3 to your deposition and</p> <p>23 specifically the subpoena for that deposition notice.</p> <p>24 We've gone over item No. 8 already, which is going to be</p> <p>25 all invoices for work you've done in this case. Is that</p>	
09:30:40-09:32:13	Page 39	09:33:45-09:35:02	Page 41
<p>1 provided before the deposition here today a letter that we</p> <p>2 have talked about earlier from the plaintiff's attorney, I</p> <p>3 believe it's from November of 2019.</p> <p>4 A. Yes, sir.</p> <p>5 Q. And I'm going to refer you to that here at this</p> <p>6 time, if we can have that labeled and identified as</p> <p>7 Exhibit No. 5 to the deposition.</p> <p>8 (Exhibit 5 was marked for identification.)</p> <p>9 BY MR. FINLEY:</p> <p>10 Q. And, Mr. Nelson, do you have a copy of that</p> <p>11 letter in front of you?</p> <p>12 A. Hang on just a second.</p> <p>13 Q. Sure. Do you see a copy of the letter in front</p> <p>14 of you, Mr. Nelson?</p> <p>15 A. Okay. I have that.</p> <p>16 Q. All right. The letter dated November 11th of</p> <p>17 2019 from Mr. Fischel, the plaintiff's attorney, to you</p> <p>18 refers to a signed retainer that was provided back along</p> <p>19 with the retainer check.</p> <p>20 A. Yes.</p> <p>21 Q. Do you have a copy of the retainer agreement</p> <p>22 signed on behalf of Ms. Perez by her attorney still?</p> <p>23 A. Well, let me look. Hang on.</p> <p>24 Q. Okay.</p> <p>25 A. Are you talking about the contract?</p>		<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. We've talked about previously on your CV,</p> <p>4 Mr. Nelson, the book that you identify, in your CV at</p> <p>5 least, as being editorial duties related to it with Ruhl</p> <p>6 and Associates.</p> <p>7 Is that the complete bibliography of all books,</p> <p>8 articles, or treatises that you've authored?</p> <p>9 A. No, it is not.</p> <p>10 Q. Okay. What other items or books, articles, what</p> <p>11 have you, have you authored, or had a hand in authoring?</p> <p>12 A. I wrote a few other articles -- no, let me put</p> <p>13 it this way. Aside from the book that we, that the</p> <p>14 company published I had written some articles on different</p> <p>15 topics over my years at Ruhl Forensics (indiscernible) to</p> <p>16 creating the primer.</p> <p>17 Q. You wrote articles that went into creating the</p> <p>18 primer. Is that correct?</p> <p>19 A. No. Articles aside from that published book.</p> <p>20 Q. Aside from the primer. Okay.</p> <p>21 How many of those did you author?</p> <p>22 A. I believe two.</p> <p>23 Q. Okay. What were the names of those?</p> <p>24 A. I don't recall the names of them.</p> <p>25 Q. Okay. Were you the only author for those two</p>	

<p>09:35:07-09:36:30 Page 42</p> <p>1 articles, or were there any other?</p> <p>2 A. Yes. I was the only author.</p> <p>3 Q. And when would those articles have been</p> <p>4 authored?</p> <p>5 A. While I was at -- during my employment with Ruhl</p> <p>6 Forensics.</p> <p>7 Q. Okay. Do you have copies of those articles</p> <p>8 still?</p> <p>9 A. No, sir.</p> <p>10 Q. Do you know where copies of those articles</p> <p>11 exist, if they still do?</p> <p>12 A. I have no idea. Both, both individuals at Ruhl</p> <p>13 Forensics have passed away since then. I don't know where</p> <p>14 anybody else is that used to work there and I have no idea</p> <p>15 even where the primer book is nowadays.</p> <p>16 Q. Okay. The two articles, I know you don't recall</p> <p>17 the names of them, can you tell me the subject matter of</p> <p>18 one or both of the those articles.</p> <p>19 A. One of the articles was referencing pre-trip</p> <p>20 inspections of tractor-trailers, or commercial vehicles.</p> <p>21 The other article involved loading and unloading issues.</p> <p>22 Q. Do you know if either one of those articles was</p> <p>23 ever peer reviewed?</p> <p>24 A. Well, they were peer reviewed by the staff at</p> <p>25 Ruhl Forensics.</p>	<p>09:37:28-09:38:45 Page 44</p> <p>1 any exist?</p> <p>2 A. I don't believe I did any calculations in this</p> <p>3 case.</p> <p>4 Q. Okay. And No. 14 was referring to a copy of any</p> <p>5 lists that were prepared by you which reflects cases in</p> <p>6 which you have given testimony.</p> <p>7 Mr. Nelson, I have been provided in this case a</p> <p>8 testimonial history list. Is that the only list that you</p> <p>9 possess related to prior testimony?</p> <p>10 A. You're speaking of the Rule 26 list?</p> <p>11 Q. Yes, sir, I am.</p> <p>12 A. Yes. That's the only one.</p> <p>13 Q. Okay. Mr. Nelson, in terms of your retainment</p> <p>14 in this case and your hiring, how were you hired? Was</p> <p>15 it -- were you called by plaintiff's counsel? Were you</p> <p>16 emailed by him?</p> <p>17 A. It was a phone call, I'm sure.</p> <p>18 Q. Okay. And who was that from?</p> <p>19 A. Mr. Fischel.</p> <p>20 Q. And would that have been at or near the time of</p> <p>21 his letter to you November of 2019?</p> <p>22 A. I'm sure it had to be before that time. As to</p> <p>23 the exact date, I don't know.</p> <p>24 Q. Okay. If it was before -- I'm sorry. I didn't</p> <p>25 catch that last part.</p>
<p>09:36:30-09:37:23 Page 43</p> <p>1 Q. Outside of the staff at Ruhl do you know if any</p> <p>2 other colleagues in the industry have peer reviewed it?</p> <p>3 A. I have no idea.</p> <p>4 Q. Okay. Moving on to your subpoena, or going back</p> <p>5 to your subpoena. We've looked at your CV and resumé.</p> <p>6 That's the only CV and resumé you have, Mr.</p> <p>7 Nelson, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. No. 11, all physical or visual models,</p> <p>10 compilations of data, notes, studies, and documents</p> <p>11 prepared by you in anticipation of trial, or your</p> <p>12 deposition testimony are contained in the file that we</p> <p>13 have gone over today?</p> <p>14 A. Yes.</p> <p>15 Q. That you will be providing to the court</p> <p>16 reporter?</p> <p>17 A. Yes, sir.</p> <p>18 Q. To the extent that there is any video or motion</p> <p>19 picture images which you possess related to the work</p> <p>20 you've done in the case, that would be contained in your</p> <p>21 file as well?</p> <p>22 A. There are none.</p> <p>23 Q. There's none? Okay.</p> <p>24 To the extent there's any calculations you've</p> <p>25 done in the case would those be contained in your file if</p>	<p>09:38:47-09:40:00 Page 45</p> <p>1 A. It was near the date of the letter.</p> <p>2 Q. Okay. So near November of 2019 if not in</p> <p>3 November?</p> <p>4 A. Yes.</p> <p>5 Q. All right. Now, have you ever worked for</p> <p>6 Mr. Fischel before --</p> <p>7 A. I have.</p> <p>8 Q. -- as a consultant for a lawsuit?</p> <p>9 How many times have you worked before him -- for</p> <p>10 him, I'm sorry, in the past?</p> <p>11 A. I think it was one other case, maybe two.</p> <p>12 Q. Okay. Those one or two other cases were they,</p> <p>13 were they both or was that one in Texas as well?</p> <p>14 A. Yes.</p> <p>15 Q. And do you know the years in which you worked</p> <p>16 for him on those one or two other cases?</p> <p>17 A. No, sir, I don't. Either 2019, 2018, 2017. I</p> <p>18 can't be sure.</p> <p>19 Q. But in that time period?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And in those prior occasions when you</p> <p>22 worked for him were you working for him on one or both of</p> <p>23 those times on behalf of the plaintiffs, the plaintiff in</p> <p>24 that case?</p> <p>25 A. Yes, sir.</p>

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1 Q. Okay. In those prior occasions in which you
2 worked for Mr. Fischel did you have to end up testifying
3 in a deposition or at trial?
4 A. Yes.
5 Q. In both those occasions?
6 A. One I remember.
7 Q. Okay. Was it a deposition or trial?
8 A. Deposition.
9 Q. Now, Mr. Fischel is working with the Davis Law
10 Firm.
11 Have you ever been hired by an attorney with the
12 Davis Law Firm before besides Mr. Fischel?
13 A. No.
14 Q. When Mr. Fischel hired you in the past do you
15 know which law firm he was working with at that time?
16 A. Thomas J. Henry.
17 Q. Was that on both occasions when he hired you in
18 the past?
19 A. Yes.
20 Q. Now, that firm, to your understanding, is that
21 primarily a plaintiffs attorneys firm, if you will?
22 A. That's my understanding, yes, sir.
23 Q. Okay. And that being the Thomas J. Henry firm,
24 how many times have you been hired by them?
25 A. I can't give you a definite number on that.

09:41:26-09:42:49

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1 Since I --
2 Q. If you can --
3 A. In the past three years.
4 Q. It's been in the past three years?
5 A. Yes.
6 Q. Are you an able to approximate how many times?
7 A. Oh, probably 50, 60 times.
8 Q. With that firm in the last three years?
9 A. Yes, sir.
10 Q. Okay. And in those 50 or 60 times has it all
11 been on behalf of the plaintiff?
12 A. It has, since Thomas J. Henry is a plaintiffs
13 firm.
14 Q. Okay. Now, in this particular, in this
15 particular case, Mr. Nelson, what was the scope of your
16 retention?
17 A. In this case?
18 Q. What were you -- yes, sir. What were you asked
19 to do?
20 A. I was asked to, of course, take a look at the
21 collision and the collision sequence and the events
22 leading up to the collision sequence. I was also asked to
23 take a look at the validity of Mr. -- of the defendant's
24 qualification in terms of a professional driver and of the
25 company's responsibilities in terms of being compliant

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1 with the federal regulations.
2 Q. Okay. And I wrote down some notes as you were
3 saying that, so I just want to make sure I got it correct.
4 You were asked to look at the collision
5 sequence, the events leading up to the sequence of the
6 accident, the qualifications of Mr. Boecken, and the
7 compliance of Jim Ballard d/b/a CAB Transport. Is that
8 correct?
9 A. Yes, sir, that's correct.
10 Q. Is there anything I left off that list?
11 A. No.
12 Q. Okay. When you were hired by counsel for
13 plaintiff were you told why you were being retained? Were
14 you told specifically the scope of the work expected from
15 you?
16 A. No. I don't think I was told specifically,
17 specifically, I'm sorry, of the work expected of me. I
18 think Mr. Fischel knew the type of work and type of
19 litigation that I was involved with, that being a
20 consultant in the commercial trucking industry. You know,
21 since it's a case involving a commercial vehicle he called
22 me to take a look at it and see if --
23 Q. I take it -- all right. I cut you off. I'm
24 sorry.
25 A. I just said to see if I could assist him.

09:44:20-09:45:42

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1 Q. Okay. Is it fair to say, then, that you
2 determined the scope of the work you were going to perform
3 as opposed to the attorney telling you?
4 A. That's correct. Provided I received the
5 necessary information to do that.
6 Q. Okay. And in your retention itself were you
7 told by counsel for the plaintiff to consider the actions
8 of Jessica Perez with regards to this accident?
9 A. That's the reason why I needed to analyze the
10 collision sequence involving the truck and passenger
11 vehicle.
12 Q. Okay. And was it -- specifically when you were
13 retained were you told to also consider her actions in
14 looking at the accident?
15 A. No. I wasn't told to consider anything. I was
16 just told about the accident itself, the way it happened,
17 and then from that point on the documents were sent to me
18 and then I get to review the documents and develop my
19 opinions.
20 Q. Okay. Did you interview anyone in formulating
21 your opinions?
22 A. No.
23 Q. Aside from the two deposition transcripts that
24 we talked about earlier as being in your file, have you
25 reviewed any other statements related to anyone purporting

09:45:45-09:47:24	Page 50	09:49:28-09:50:56	Page 52
<p>1 to be a witness to this accident?</p> <p>2 A. Only the statement that was written by</p> <p>3 Mr. Boecken, or allegedly written by Mr. Boecken.</p> <p>4 Q. And the statement you're referring to is that</p> <p>5 one of the Bates labeled documents produced in this case</p> <p>6 by defendants?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And I believe that would be Bates labeled</p> <p>9 Ballard 2 through 4 if you have those in front of you. If</p> <p>10 you don't, that's what I believe you're referring to.</p> <p>11 A. Well, let's see. I'm looking at something from</p> <p>12 Commercial Truck Claims Management entitled driver's</p> <p>13 statement form. And, you're correct, it's Ballard 2</p> <p>14 through 4.</p> <p>15 Q. Okay. So aside from the two deposition</p> <p>16 transcripts and that statement you haven't reviewed any</p> <p>17 other statements. Is that correct?</p> <p>18 A. I don't have any other statements to review.</p> <p>19 Q. Okay. Okay. In terms of any research</p> <p>20 documentation have you reviewed any that you relied upon</p> <p>21 in this case?</p> <p>22 A. What do you mean research documentation?</p> <p>23 Q. Well, any type of peer review literature,</p> <p>24 treatises, articles, things of that nature.</p> <p>25 A. Other than the Federal Motor Carrier Safety</p>	<p>1 formulating your opinions about this case aside from</p> <p>2 what's been provided to you previously by the plaintiff's</p> <p>3 attorney, and aside from the Federal Motor Carrier Safety</p> <p>4 Regulations that you referred to earlier and the Texas</p> <p>5 commercial driver's handbook?</p> <p>6 A. The only, the only other information would be</p> <p>7 my, of course my knowledge, training, and experience in</p> <p>8 the last 35 years doing this work.</p> <p>9 Q. Okay. But in terms of actual documents,</p> <p>10 literature, notes, what have you, nothing else besides</p> <p>11 those items that I just mentioned?</p> <p>12 A. Right. And the items contained in the case</p> <p>13 file.</p> <p>14 Q. That's correct. Now, Mr. Nelson, what areas do</p> <p>15 you consider yourself to be an expert witness in?</p> <p>16 A. It would be commercial vehicle accident</p> <p>17 investigation and reconstruction; it would be litigation</p> <p>18 matters involving commercial vehicle collisions, or any</p> <p>19 vehicle collision as a matter of fact, but more so towards</p> <p>20 the commercial vehicle side.</p> <p>21 Q. So I have commercial vehicle accident</p> <p>22 investigations and reconstruction. And what else?</p> <p>23 A. Well, it would be the, the compliance with the</p> <p>24 Federal Motor Carrier Safety Regulations and state</p> <p>25 regulations. I think my CV has that listed.</p>		
09:47:29-09:49:19	Page 51	09:51:04-09:52:02	Page 53
<p>1 Regulations and the Texas CDL Manual, no.</p> <p>2 Q. Okay. The documents that you were provided by</p> <p>3 counsel for plaintiff, when did you receive those?</p> <p>4 A. All right. Let's see. It had to be, it had to</p> <p>5 be included with the November 11th, 2019 letter from Davis</p> <p>6 Law Firm.</p> <p>7 Q. Did you receive items at a later date besides</p> <p>8 that?</p> <p>9 A. The only other item that I can remember</p> <p>10 receiving would be Andy Sievers' report.</p> <p>11 Q. Okay. And that would have been after</p> <p>12 November 11th, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Any other items besides Mr. Sievers' report that</p> <p>15 you received at a later date that you're aware of?</p> <p>16 A. Not that I know of.</p> <p>17 Q. Okay. In formulating and conducting your</p> <p>18 analysis in this case and formulating your opinions did</p> <p>19 you review any other expert reports besides the one from</p> <p>20 Mr. Sievers?</p> <p>21 A. No.</p> <p>22 Q. Have you spoken to any other expert witnesses in</p> <p>23 this case?</p> <p>24 A. I have not.</p> <p>25 Q. Have you considered any other information in</p>	<p>1 Q. I see you have a generic itemization there of</p> <p>2 duties, if you will, or areas that you worked on under</p> <p>3 Commercial Vehicle Forensics.</p> <p>4 Is that what you're referring to?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. I take it, then, Mr. Nelson, you're not a</p> <p>7 biomechanical engineer, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And you're not a biomechanical expert of any</p> <p>10 kind, are you?</p> <p>11 A. That's correct.</p> <p>12 Q. All right. You're not a licensed physician?</p> <p>13 A. No.</p> <p>14 Q. You're not qualified to give opinions on injury</p> <p>15 causation, are you?</p> <p>16 A. That's correct.</p> <p>17 Q. And you're not planning to testify as to any</p> <p>18 alleged injuries from this accident, are you?</p> <p>19 A. That's correct. Those guys charge a whole lot</p> <p>20 more money than I do.</p> <p>21 Q. You're not a humans factors, a human factors</p> <p>22 expert either, are you?</p> <p>23 A. Correct.</p> <p>24 Q. Now, with regards to the areas that you, that</p> <p>25 you testified to being an expert in, when did you first</p>		

09:52:05-09:53:20	Page 54	09:55:30-09:57:26	Page 56
<p>1 become a consultant in the field of commercial vehicle</p> <p>2 accident reconstruction and investigation?</p> <p>3 A. I believe that would be sometime during 1985</p> <p>4 after I left of the department and became employed by D&A</p> <p>5 Consultants the first time.</p> <p>6 Q. Okay. With regards to your training, what do</p> <p>7 you rely upon in terms of your training for holding</p> <p>8 yourself out to be an accident reconstruction expert?</p> <p>9 A. That would have been my training with the</p> <p>10 Department of Public Safety, various classes and courses I</p> <p>11 took along the way regarding accident reconstruction, and,</p> <p>12 of course, my work in the field of accident</p> <p>13 reconstruction, applying those methods.</p> <p>14 Q. Which classes specifically are you referring to?</p> <p>15 A. There were several classes. I have gone to</p> <p>16 several seminars specifically geared toward accident</p> <p>17 reconstruction and --</p> <p>18 Q. Okay. Can you identify, can you identify those</p> <p>19 in your CV?</p> <p>20 A. I believe I have, yes, sir.</p> <p>21 Q. No. I'm sorry. Can you for me now just so I</p> <p>22 know which ones you're talking about?</p> <p>23 A. Let me get the CV, I need the CV in front of me</p> <p>24 to do that.</p> <p>25 MR. FINLEY: Okay. If the videographer can pull</p>	<p>1 (Exhibit 7 was marked for identification.)</p> <p>2 BY MR. FINLEY:</p> <p>3 Q. And if we look at, if we look at page nine from</p> <p>4 that document -- we have that pulled up.</p> <p>5 Mr. Nelson, the second sentence in the</p> <p>6 description of your expert designation provided there</p> <p>7 states that you're expected to testify as to the link</p> <p>8 between force magnitude and visible damage in a motor</p> <p>9 vehicle collision that resulted in vehicle damages,</p> <p>10 relationship between impact force on the vehicle and the</p> <p>11 force transmitted to the vehicle occupants during the</p> <p>12 accident in this case.</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I have read through your report, Mr.</p> <p>16 Nelson, and we've talked about the areas in which you hold</p> <p>17 yourself out to be an expert witness. I have not</p> <p>18 identified anything in your report with regards to a link</p> <p>19 between force magnitude and visible damage in a collision</p> <p>20 that results in a vehicle damaged, or the relationship</p> <p>21 between impact force on the vehicle and the force</p> <p>22 transmitted to vehicle occupants.</p> <p>23 Am I correct in that, in that reading of your</p> <p>24 report?</p> <p>25 A. Yes.</p>		
09:53:25-09:55:30	Page 55	09:57:28-09:58:54	Page 57
<p>1 up Exhibit No. 1.</p> <p>2 THE VIDEOGRAPHER: Is this the area?</p> <p>3 THE WITNESS: Yes.</p> <p>4 MR. FINLEY: Yes.</p> <p>5 THE WITNESS: As you can see, directly under</p> <p>6 other training and seminars is the SATAI annual conference</p> <p>7 in Glendale, and that is entirely geared towards accident</p> <p>8 reconstruction.</p> <p>9 BY MR. FINLEY:</p> <p>10 Q. Okay.</p> <p>11 A. Commercial vehicle crash testing in Germany was</p> <p>12 a direct, directly geared to accident reconstruction. The</p> <p>13 Collision Investigation and Reconstruction, the World</p> <p>14 Reconstruction Exposition in College Station, Texas was</p> <p>15 another one. Advanced Accident Reconstruction Course by</p> <p>16 Texas A&M University is another one. Accident</p> <p>17 Reconstruction Course from Dynamic Science in the year of</p> <p>18 1977 while I was still on the department is another area</p> <p>19 of reconstruction instruction. And, of course, working</p> <p>20 with reconstruction calculations, and what have you,</p> <p>21 concerning vehicle collisions over the years.</p> <p>22 Q. Mr. Nelson, I want to refer you now to what I'm</p> <p>23 going to have identified as Exhibit -- I believe we're on</p> <p>24 No. 7 -- and that's going to be a copy of the plaintiff's</p> <p>25 expert designation.</p>	<p>1 Q. Okay. The areas described here in your</p> <p>2 designation those do not match up with what you were</p> <p>3 providing in terms of opinions in this case. Is that</p> <p>4 correct?</p> <p>5 A. I would agree.</p> <p>6 Q. Okay. Mr. Nelson, with regards to your work as</p> <p>7 a consultant or expert witness, what percentage of your</p> <p>8 income is derived from litigation related services versus</p> <p>9 nonlitigation services?</p> <p>10 A. The only other income that's provided to me is</p> <p>11 my social security check.</p> <p>12 Q. So in terms of the work that you do today would</p> <p>13 it be fair to say that 100 percent is related to</p> <p>14 litigation based services?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. What percentage of your consulting or</p> <p>17 expert practice in litigation is on behalf of plaintiffs</p> <p>18 versus defendants?</p> <p>19 A. Well, for the past year now I would say it's</p> <p>20 leaned towards 75 percent plaintiff; however, in the past</p> <p>21 it would depend on the caseload that I had. Sometimes it</p> <p>22 was 50/50, sometimes 70 percent plaintiff 30 percent</p> <p>23 defendant.</p> <p>24 Q. You said the past year it's gone to 75 percent</p> <p>25 plaintiff, 25 percent defendant. And then, if I heard you</p>		

<p>09:58:56-10:00:07 Page 58</p> <p>1 correctly, in the past it's been at times 70 to plaintiff 2 versus 30 for defendant, correct? 3 A. It's 95 percent plaintiff in the past year. 4 Q. Oh, you said 95. I'm sorry. I thought I heard 5 75. Okay. 95 in the past year. 6 Was that correct, though, in what you said about 7 prior testimony, or prior work history? 8 A. Yes, sir. 9 Q. Okay. When you were referring to the past it 10 being sometimes 70/30, sometimes 50/50, how far back are 11 you going? 12 A. It would probably, up to and including my first 13 year on my own with my own business, beyond that it's been 14 mostly plaintiff cases. 15 Q. Okay. And when was your first year on your own, 16 then? 17 A. 2016. 18 Q. Okay. I believe we're on -- 19 A. Actually, I think -- 20 Q. Go ahead, sir. 21 A. -- 2016. 22 MR. FINLEY: Correct me if I'm wrong, Ms. Court 23 Reporter, but I believe we are on Exhibit No. 8. Assuming 24 that is the case, can we make that the Rule 26 Testimonial 25 History list for Mr. Nelson.</p>	<p>10:02:28-10:03:32 Page 60</p> <p>1 since that time? 2 A. This list is not quite up to date and I have 3 testified since then. 4 Q. All right. How many times have you -- 5 A. What I can do is bring it up to date if you'd 6 like and resubmit -- 7 Q. Yeah. I'd ask, if you can, I'd ask you to 8 supplement or bring the list up to date. When -- you 9 know, we can do that and have that supplemented after the 10 deposition but with current testimony, or, you know, 11 current list of what you've testified in. Let me ask you 12 this, sir. 13 Since that time how many other cases have you 14 testified in? 15 A. I'd have to research my calendar to give you 16 that information. 17 Q. All right. Are you able to approximate as we 18 sit here? 19 A. Maybe four, five, six. I don't know. 20 Q. Okay. Those four to six cases, roughly, have 21 they been all for plaintiff? Have they been mixed? 22 A. Plaintiff. 23 Q. Okay. And, any of those cases, have they been 24 in Texas? 25 A. Yes.</p>
<p>10:00:54-10:02:25 Page 59</p> <p>1 (Exhibit 8 was marked for identification.) 2 MR. FINLEY: If we have that pulled up for 3 Mr. Nelson please let me know. 4 BY MR. FINLEY: 5 Q. Okay. Mr. Nelson, can you see that list in 6 front of you? 7 A. I can. 8 Q. Okay. I see that list and it dates back to 2011 9 as far as I can tell. Is that correct? 10 A. Yes, sir. 11 Q. All right. Now, am I correct in that you've 12 been testifying longer as an expert witness than 2011? 13 A. Yes. 14 Q. This is just a list as far back as you have it 15 compiled. Is that correct? 16 A. That's correct. 17 Q. All right. Now, does this list contain all 18 cases in which you've testified either at trial or in 19 deposition, or is it limited to one or the other? 20 A. No. Both. 21 Q. Both of those. Okay. 22 If we start here at the bottom of your list, the 23 most recent case you have on there is from November of 24 2019. 25 Is this list up to date, or have you testified</p>	<p>10:03:33-10:04:36 Page 61</p> <p>1 Q. Okay. What, if you know, how many of the four 2 to six have been in Texas? 3 A. All of them. 4 Q. All right. And then the cases that we look at 5 here on your list, Mr. Nelson, is there any way of 6 distinguishing, just from looking at your list, whether or 7 not they were a, a testimony on behalf of plaintiff or 8 defendant? 9 A. No. I have -- I don't have that singled out as 10 such. 11 Q. Okay. I understand. 12 Of the list we have here in front of us are you 13 able to give me, as best you can by looking at that list, 14 the percentage breakdown, approximately, of what it would 15 be in terms of testimony for plaintiffs versus defendants? 16 A. No. 17 Q. Okay. Do you have an approximation as to what 18 it would be? Do you know what that would be -- 19 A. No. 20 Q. -- going back to 2011? 21 A. No, I don't. 22 Q. So, as you sit here, you couldn't tell me if it 23 was 50/50, 70/30, one way or the other, in terms of your 24 testimonial history breakdown plaintiff versus defendant? 25 A. That's correct.</p>

<p>10:04:37-10:05:43 Page 62</p> <p>1 Q. Is it fair to say that it would mirror the 2 numbers that you gave me earlier? Well, let me strike 3 that, because that's not a fair assumption to make. 4 You told me earlier, and correct me if I'm 5 wrong, that percentage breakdown is of the cases you've 6 been retained in, correct? 7 A. Yes. 8 Q. All right. So your testimony, then, is that you 9 cannot give me a breakdown percentage of the cases that 10 you've testified in whether it be for plaintiff or 11 defendant? 12 A. Well, it's going to be the same percentage, per 13 se, depending on, you know, the cases that I have 14 testified in over the years. I just can't tell you -- 15 Q. And -- 16 A. -- one way or the other. 17 Q. And that's what I'm getting at is you gave me 18 earlier a percentage breakdown of retention in terms of 19 who you were retained on behalf of. 20 Can you give me that same type of approximation 21 for a breakdown of cases in which you testified, if you 22 testified on behalf of plaintiff or defendant? 23 A. No, sir, I can't. It's just too far back. 24 Q. All right. Let's break it down then. Let's go 25 back to 2016, since you opened up your own business.</p>	<p>10:07:15-10:08:08 Page 64</p> <p>1 accurately show how many times you've testified? 2 A. Yes. 3 Q. All right. What was the -- do you recall the 4 last case in which you gave any testimony in specifically? 5 A. I'd have to go back to my calendar to tell you 6 that. 7 Q. Okay. And would you be able to give me the name 8 of that case -- 9 A. No. 10 Q. -- without looking at the calendar right now? 11 A. No. I'd have to look at the calendar to see 12 which one it is. 13 Q. All right. If you recall, was it in this month, 14 or was it last month? Do you know when you approximately 15 testified? 16 A. It was this month. 17 Q. Okay. 18 A. In fact, I think it was last week. We were 19 doing the same thing we are doing here today. 20 Q. All right. Was that a case in Texas? 21 A. Yes. 22 Q. All right. Was it in San Antonio, Bexar County, 23 or do you know where in the state? 24 A. I'd have to look that up to tell you that. 25 Q. Sure. Do you know if it's a federal case or a</p>
<p>10:05:47-10:07:11 Page 63</p> <p>1 Can you give me an approximation breakdown of 2 plaintiff versus defendant testimony since that time? 3 A. Oh, it would probably be 80 percent plaintiff, 4 20 percent defense, just an estimation. 5 Q. Okay. 6 A. Of course you have to realize that once I'm done 7 with a case it goes away and I go to the next one. So 8 memory wise is not real sharp when it comes to this. 9 Q. I understand. I'm just asking you to give me 10 your best approximation as we sit here now with regards to 11 the breakdown in the past. 12 Are you able to give me an idea, approximately, 13 of how many depositions you've given before in the past? 14 A. Probably hundreds. 15 Q. In the hundreds? 16 A. Yes. 17 Q. Okay. And how far back does that span? 18 A. 1985. 19 Q. Okay. Since you opened up your own business in 20 2016 can I take the number of cases identified here on 21 this list as being the number of times you've testified, 22 or given a deposition? 23 A. Yes. 24 Q. Okay. Same thing for this question. 25 In the past year can I rely upon this list to</p>	<p>10:08:10-10:09:27 Page 65</p> <p>1 state court case? 2 A. I don't remember. 3 Q. And that case, I take it from your prior 4 testimony, was on behalf the plaintiff? 5 A. Yes. 6 Q. Do you recall the last time you testified at 7 trial? 8 A. No, I don't. 9 Q. Would it be on your list here or would it be one 10 of the cases in which is not on your list currently? 11 A. That I don't know. I would have to look at the 12 calendar, once again, to give you that information. 13 Q. Okay. Is that something you would be able to do 14 on a break here today? 15 A. I probably could. All I have to do is get to my 16 calendar. And hopefully I didn't delete it. 17 Q. All right. Mr. Nelson, in your experience have 18 you ever been struck before as an expert witness, or 19 limited in testimony? 20 A. Limited in testimony, yes. 21 Q. Okay. How many times? 22 A. Once that I know of. 23 Q. Okay. And where was that? 24 A. In Wyoming. 25 Q. Was that a federal court case or state court?</p>

10:09:34-10:11:04 Page 66	10:12:31-10:22:13 Page 68
<p>1 A. Oh, I don't remember. It was sometime ago.</p> <p>2 Q. Okay. And approximately how long ago was it?</p> <p>3 A. Geez, I don't know. It's been awhile.</p> <p>4 Q. Okay.</p> <p>5 A. Probably 15 years ago.</p> <p>6 Q. All right. And, specifically, do you know the</p> <p>7 issues that were involved that you were limited to not be</p> <p>8 able to testify about?</p> <p>9 A. I do. It was --</p> <p>10 Q. What were those?</p> <p>11 A. Let me explain the case to you a little bit</p> <p>12 and --</p> <p>13 Q. Okay.</p> <p>14 A. -- we can ferret out the issues that were</p> <p>15 involved.</p> <p>16 It was a snow storm in the middle of Wyoming.</p> <p>17 Two trucks were traveling down the interstate. Up ahead</p> <p>18 was a prior accident involving six or seven trucks and a</p> <p>19 number of passenger vehicles that were stopped and</p> <p>20 blocking the highway. The truck following the other truck</p> <p>21 was at a safe distance at the time that the other truck</p> <p>22 decided to swerve to the right to avoid the collision that</p> <p>23 had occurred prior to them arriving to the scene. At that</p> <p>24 moment in time it opened up the road to the truck behind.</p> <p>25 He couldn't stop because of inclement weather conditions</p>	<p>1 look at the testimonial history we talked about earlier.</p> <p>2 A. Okay.</p> <p>3 MR. FINLEY: Let's go off the record.</p> <p>4 THE VIDEOGRAPHER: Going off the record at</p> <p>5 10:12 a.m.</p> <p>6 (Recess taken from 10:12 a.m. to 10:21 a.m.)</p> <p>7 THE VIDEOGRAPHER: Back on the record at</p> <p>8 10:21 a.m.</p> <p>9 BY MR. FINLEY:</p> <p>10 Q. Mr. Nelson, we're back on the record.</p> <p>11 Are you ready to proceed?</p> <p>12 A. Yes, sir.</p> <p>13 Q. All right. We went on a break, and before we</p> <p>14 went on the break we talked about you looking at your</p> <p>15 calendar to see the last time you testified.</p> <p>16 Were you able to do that on the break?</p> <p>17 A. Yes, sir.</p> <p>18 Q. When was the last time you provided testimony?</p> <p>19 A. Last week.</p> <p>20 Q. All right. And what date, specifically, if you</p> <p>21 have it?</p> <p>22 A. It would be Monday April 13th.</p> <p>23 Q. Okay. And do you have the style of the case in</p> <p>24 front of you?</p> <p>25 A. Hang on a minute and I'll get that for you.</p>
10:11:09-10:12:28 Page 67	10:22:13-10:24:03 Page 69
<p>1 and struck one of the trucks.</p> <p>2 I, in turn, provided an opinion that the driver</p> <p>3 was following at a safe distance in accordance with the</p> <p>4 recommendations in the commercial driver's license manual</p> <p>5 and in accordance with federal regulation under a</p> <p>6 hazardous condition, but the judge struck, or at least</p> <p>7 limited, my testimony in that regard saying that I didn't</p> <p>8 reconstruct the accident, or it was part of a</p> <p>9 reconstruction, and I didn't reconstruct the accident. I</p> <p>10 was only opining on commercial driver's license manual</p> <p>11 recommendations.</p> <p>12 Q. So the testimony that was limited by you or</p> <p>13 struck in some fashion related to reconstruction opinions</p> <p>14 of the accident. Is it fair to say?</p> <p>15 A. That's what he said, but, actually, there was no</p> <p>16 reconstruction performed on this accident in terms of my</p> <p>17 opinions in the case.</p> <p>18 Q. I understand that. I'm saying your</p> <p>19 understanding of the order issued by the court was that</p> <p>20 you could not provide testimony related to a</p> <p>21 reconstruction of the accident. Is that correct?</p> <p>22 A. That's right.</p> <p>23 Q. Okay. Why don't we do this. I think we're at a</p> <p>24 good point to take a brief break, and, Mr. Nelson, if you</p> <p>25 could look at your calendar while we're on the break to</p>	<p>1 Q. Okay.</p> <p>2 A. It would be cause No. 18-427 in the District</p> <p>3 Court of Kindle County, Texas.</p> <p>4 Q. Just to be clear, that was cause No. 18, one</p> <p>5 eight, dash 427?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And in that particular matter is was a</p> <p>8 deposition, correct?</p> <p>9 A. Yes.</p> <p>10 Q. On behalf of the plaintiff?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Now, Mr. Nelson, in this particular case, with</p> <p>13 regards to the work you performed, did you at all attempt</p> <p>14 to reconstruction this accident?</p> <p>15 A. I did not.</p> <p>16 Q. Okay. With regards to the work you performed in</p> <p>17 this case did you provide -- I'm sorry -- did you perform</p> <p>18 any type of inspection at the scene of the accident?</p> <p>19 A. No, sir.</p> <p>20 Q. Did you inspect the tractor-trailer operated by</p> <p>21 Mr. Boecken?</p> <p>22 A. No.</p> <p>23 Q. Did you inspect the vehicle operated by</p> <p>24 Ms. Perez?</p> <p>25 A. I did not.</p>

10:24:04-10:26:15 Page 70	10:27:33-10:28:42 Page 72
<p>1 Q. I take it, then, because there were no</p> <p>2 inspections performed of either one of those two vehicles,</p> <p>3 no measurements were performed by you of the vehicles</p> <p>4 involved in the accident?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. No measurements performed of the scene,</p> <p>7 as well, by you?</p> <p>8 A. Correct.</p> <p>9 Q. Have you ever been to the scene of the accident,</p> <p>10 whether or not related to this case?</p> <p>11 A. I don't know if I have been through there at</p> <p>12 some point in my life or not, but not specifically for</p> <p>13 this collision.</p> <p>14 Q. Okay. Have you been provided any photographs</p> <p>15 from the scene of the accident or any videos from the</p> <p>16 scene of the accident?</p> <p>17 A. I have been provided photographs by your office.</p> <p>18 Q. Were any of those photographs of the scene to</p> <p>19 your understanding?</p> <p>20 A. Let me look.</p> <p>21 Q. Okay.</p> <p>22 A. Not that I can see.</p> <p>23 Q. All right.</p> <p>24 A. Any scene of the accident photographs either.</p> <p>25 Q. Or videos for that matter?</p>	<p>1 that vehicle any time before the accident?</p> <p>2 A. There's no information on that vehicle other</p> <p>3 than a blue Toyota. So it would be impossible to come up</p> <p>4 with any speed calculations.</p> <p>5 MR. FINLEY: I will object to nonresponsive.</p> <p>6 BY MR. FINLEY:</p> <p>7 Q. My question simply is have you performed any</p> <p>8 calculations related to that vehicle, the blue Toyota?</p> <p>9 A. No.</p> <p>10 Q. And I take it from your testimony you have no</p> <p>11 basis supported by any calculations to offer opinions</p> <p>12 regarding the speed of any vehicles before the accident</p> <p>13 occurred. Is that correct?</p> <p>14 A. Not as a result of performing mathematical</p> <p>15 calculations, that would be correct.</p> <p>16 Q. Did you perform any type of a crush analysis in</p> <p>17 this case?</p> <p>18 A. No, sir.</p> <p>19 Q. Did you perform any type of a comparative damage</p> <p>20 analysis?</p> <p>21 A. What do you mean comparative damage?</p> <p>22 Q. Did you at all do any type of analysis in which</p> <p>23 you formulated opinions regarding the damage to the</p> <p>24 vehicles in comparing one to the other?</p> <p>25 A. No. Other than perusing the photographs of the</p>
10:26:18-10:27:30 Page 71	10:28:48-10:29:53 Page 73
<p>1 A. Correct.</p> <p>2 Q. Okay. Are there any measurements that you</p> <p>3 performed related to your opinions in this case?</p> <p>4 A. No, sir.</p> <p>5 Q. Okay. Have you performed any speed calculations</p> <p>6 related to the opinions you have in this case?</p> <p>7 A. No.</p> <p>8 Q. And I take it, then, you have not come to any</p> <p>9 conclusions regarding the speed of the plaintiff's vehicle</p> <p>10 at any point in time before the accident?</p> <p>11 A. Only by deposition testimony.</p> <p>12 Q. And by that you mean you're relying upon the</p> <p>13 testimony of Ms. Perez and what she has said?</p> <p>14 A. And Mr. --</p> <p>15 Q. Or Mr. Boecken?</p> <p>16 A. Yes, sir, that's correct.</p> <p>17 Q. Okay. But you have not done an independent</p> <p>18 analysis or calculations of the testimony they provided in</p> <p>19 formulating your opinions?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. With regards to the testimony provided by</p> <p>22 Mr. Boecken, and specifically the vehicle he refers to as</p> <p>23 cutting him off before this accident occurred in his</p> <p>24 deposition, have you done any type of analysis to</p> <p>25 formulate an opinion or conclusion regarding the speed of</p>	<p>1 damage, of the physical damage of both vehicles.</p> <p>2 Q. Okay. And by that --</p> <p>3 A. (Indiscernible.)</p> <p>4 Q. I'm sorry. I -- can you speak up?</p> <p>5 A. I have done no other work in that area.</p> <p>6 Q. Besides looking at the photographs of the</p> <p>7 vehicles, correct?</p> <p>8 A. The physical damage, yes, sir.</p> <p>9 Q. Yes. That's what I'm -- okay.</p> <p>10 In your analysis, Mr. Nelson, did you perform</p> <p>11 any calculations as to the amount of time the</p> <p>12 plaintiff, Jessica Perez, was positioned alongside the</p> <p>13 truck of Mr. Boecken before the accident on the highway?</p> <p>14 A. No. Only from deposition testimony.</p> <p>15 Q. And by that you mean simply relying upon what</p> <p>16 she said?</p> <p>17 A. Yes. That's correct.</p> <p>18 Q. Okay. Did you perform any calculations or</p> <p>19 conduct any independent investigation as to the amount of</p> <p>20 time that elapsed between the time Ms. Perez claims</p> <p>21 Mr. Boecken passed her on the highway and the time of the</p> <p>22 accident?</p> <p>23 A. No.</p> <p>24 Q. And specifically, I take it then, you did not do</p> <p>25 anything in terms of calculating time that elapsed between</p>

10:29:57-10:31:00	Page 74	10:32:16-10:33:36	Page 76
<p>1 the time Mr. -- I'm sorry -- between the time that you</p> <p>2 claim Mr. Boecken should have seen Ms. Perez on the</p> <p>3 highway and before the accident?</p> <p>4 A. Oh, boy. You want to ask me that one again?</p> <p>5 Q. Yeah. I'll rephrase it. I can do a better job</p> <p>6 with that.</p> <p>7 In your report I reviewed that one of your</p> <p>8 opinions is that Mr. Boecken should have seen Ms. Perez on</p> <p>9 the highway as she claims he passed her before the</p> <p>10 accident. Is that correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. All right. In coming to that opinion, or</p> <p>13 related to that opinion, did you perform any type of a</p> <p>14 calculation as to how much time elapsed between the time</p> <p>15 she contends Mr. Boecken passed her on the highway when</p> <p>16 you contend he should have seen her and the time of the</p> <p>17 accident?</p> <p>18 A. No.</p> <p>19 Q. In reviewing your report you, like I said, make</p> <p>20 note of the fact you believe Mr. Boecken should have seen</p> <p>21 Ms. Perez. Is that correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And you expect him to make a mental note of her</p> <p>24 vehicle before the accident?</p> <p>25 A. Of course I do.</p>	<p>1 down the road.</p> <p>2 Had he done that as he testified, looking in the</p> <p>3 mirror every three to five seconds, he should have been</p> <p>4 aware of the Perez vehicle alongside of his truck. Plus</p> <p>5 the fact that he has a nose mirror on the right front</p> <p>6 fender up ahead by the hood on his truck to give a view</p> <p>7 down the right side of the tractor.</p> <p>8 None of these items were apparently performed by</p> <p>9 Mr. Boecken, because he never knew the Perez vehicle was</p> <p>10 near his truck at all; never saw the truck -- I'm sorry --</p> <p>11 never saw the Perez car at any time prior to the impact.</p> <p>12 Q. In the amount of time that he was driving on the</p> <p>13 highway before this accident, Mr. Nelson, did you perform</p> <p>14 any type of analysis or calculation as to how many</p> <p>15 vehicles he would have passed on the highway that day?</p> <p>16 A. No. I didn't need to do that analysis. Because</p> <p>17 his job, and his only job, is to keep a proper lookout,</p> <p>18 number one, and that means not only ahead but alongside</p> <p>19 his vehicle as well while he's traveling down the highway.</p> <p>20 That's his job as a truck driver.</p> <p>21 MR. FINLEY: Object to nonresponsive after no.</p> <p>22 BY MR. FINLEY:</p> <p>23 Q. With regards to the amount of vehicles that he</p> <p>24 would have passed after passing, allegedly, Ms. Perez</p> <p>25 before this accident did you do any type of calculations</p>		
10:31:01-10:32:12	Page 75	10:33:38-10:34:48	Page 77
<p>1 Q. If she did nothing out of the ordinary in the</p> <p>2 operation of her vehicle that would have caught his</p> <p>3 attention while driving down the highway do you still</p> <p>4 expect him to have made mental note of her vehicle?</p> <p>5 A. Yes.</p> <p>6 Q. Is there a reason why you think he should have</p> <p>7 seen her vehicle before the accident if she did nothing</p> <p>8 out of the ordinary and not knowing how much time elapsed</p> <p>9 between the time that he passed her allegedly and the time</p> <p>10 of the accident?</p> <p>11 A. What was the --</p> <p>12 MR. FISCHER: Object to form.</p> <p>13 THE WITNESS: I'm sorry. Go ahead.</p> <p>14 MR. FISCHER: I said --</p> <p>15 BY MR. FINLEY:</p> <p>16 Q. Mr. Fischel objected to form. You can still</p> <p>17 answer.</p> <p>18 A. That's what I thought I heard.</p> <p>19 Number one, it's his job as a professional</p> <p>20 driver to be aware of traffic around his vehicle while he</p> <p>21 is driving down the highway. And, number two, Mr. Boecken</p> <p>22 has testified that every two to five seconds -- I'm</p> <p>23 sorry -- every three to five seconds he looks in the</p> <p>24 mirror to determine if there's any vehicles around his</p> <p>25 vehicle or the area around his truck while he's traveling</p>	<p>1 or analysis as to how many vehicles he passed during that</p> <p>2 time frame?</p> <p>3 A. No. Of course not, because there's no</p> <p>4 information to that effect.</p> <p>5 Q. Did you do any measurements, Mr. Nelson, on the</p> <p>6 height of Ms. Perez's vehicle next to the tractor operated</p> <p>7 by Mr. Boecken?</p> <p>8 A. No.</p> <p>9 Q. Okay. Did you perform any type of a sight-line</p> <p>10 analysis to determine the visual capabilities of Ms. Perez</p> <p>11 from her position in the driver's seat of her vehicle</p> <p>12 before the accident, immediately before the accident as</p> <p>13 she is sitting next to the tractor of Mr. Boecken?</p> <p>14 A. What do you mean sight line of the Perez</p> <p>15 vehicle?</p> <p>16 Q. Did you perform any calculation or analysis of</p> <p>17 her ability to see in front of her to the left, to the</p> <p>18 right, in any direction from her vantage point sitting</p> <p>19 next to the tractor that she contends she was next to</p> <p>20 driven by Mr. Boecken before the accident?</p> <p>21 A. You're saying did I perform any calculations.</p> <p>22 Q. Or any type of analysis regarding her sight</p> <p>23 line.</p> <p>24 A. Other than the fact that she began to accelerate</p> <p>25 which puts her position at the right front bumper of the</p>		

<p>10:34:55-10:36:01 Page 78</p> <p>1 front of the tractor-trailer. Other than that I made no 2 calculation or measurement. 3 Q. Regarding sight-line analysis? 4 A. You broke out there. What -- 5 Q. Sorry. My question was you made no calculation 6 or measurement regarding sight-line analysis? 7 A. Correct. 8 Q. The sight line of Ms. Perez. 9 A. Correct. 10 Q. Okay. And with regards to her position at that 11 time that you refer to in your answer you're relying upon 12 her deposition testimony for that? 13 A. Yes, sir, that's correct. 14 Q. Okay. Are you relying on any other information 15 provided to you besides her deposition testimony? 16 A. As far as her sight line? 17 Q. Yeah. When -- your answer as to her position 18 before the accident. 19 A. Her position is only determined by her 20 testimony, and her testimony only, since Mr. Boecken never 21 saw the Perez vehicle. 22 Q. Did you perform any type of a sight-line 23 analysis for Alvin Boecken as to his ability to see 24 Ms. Perez's vehicle alongside his tractor-trailer 25 immediately before the accident?</p>	<p>10:37:34-10:38:47 Page 80</p> <p>1 in this case, Mr. Nelson, that Mr. Boecken did not check 2 his mirror before changing lanes? 3 A. The evidence is he never saw the Perez vehicle, 4 and the Perez vehicle -- 5 Q. Did you do any -- 6 A. -- was there to be seen. 7 Q. Did you do any analysis to confirm that he could 8 have seen the Perez vehicle in this particular case? 9 A. The only analysis that I could perform in this 10 case would be the testimony of both defendant and 11 plaintiff, and that tells me that Ms. Perez had been on 12 the highway for the last, as she stated, for the last five 13 to seven minutes, and the Boecken vehicle came up 14 alongside of her. I don't know -- 15 Q. Okay. Did you do any type of independent -- 16 A. I don't know that that testimony can be disputed 17 because Mr. Boecken never saw the Perez vehicle. 18 Q. Did you do any type of independent analysis or 19 investigation to confirm the testimony of Ms. Perez as to 20 how long she was on the highway before the accident? 21 A. Her testimony indicates five to seven minutes. 22 Q. Right. Did you do anything, independent of her 23 testimony, to confirm that time frame? 24 A. No. 25 Q. Okay. Did you do any type of independent</p>
<p>10:36:02-10:37:22 Page 79</p> <p>1 A. The only analysis I would perform is my past 2 experience of sitting in this type of rig, or the cab of 3 this type of tractor and peering out through the 4 windshield and looking in the mirrors, et cetera and et 5 cetera, while you're driving down the road. 6 Q. Did you conduct any type of analysis from 7 sitting in an exemplar tractor, as to the one Mr. Boecken 8 was driving, in forming your opinions in this case? 9 A. It would be my analysis on prior cases, which I 10 have done that many times. 11 Q. Did you do it in this case? 12 A. I did not sit in the exemplar tractor, such as 13 the one being operated by Mr. Boecken for this particular 14 case. 15 Q. And in the prior cases you refer to when was the 16 last time you claim to have done some type of similar 17 analysis? 18 A. I don't remember. It's been a while, but I have 19 done it many, many times in the past. 20 Q. Okay. But you can't tell me when it was? 21 A. I don't know when it was, the last time 22 specifically. 23 Q. Okay. Can you tell me how many times? 24 A. Probably 20 to 30 times at the very least. 25 Q. Do you have any evidence to support an opinion</p>	<p>10:38:52-10:40:05 Page 81</p> <p>1 investigation or analysis to confirm as to whether or not 2 Mr. Boecken could have seen her in his mirrors before the 3 accident on the right side of his tractor? 4 A. The only analysis that I performed was, first of 5 all, looking at the pictorial evidence of the picture of 6 the tractor which indicates he has a nose mirror which 7 allows him to see down the right side of the tractor. And 8 plus the fact that if, in fact, he is approaching the 9 Perez vehicle he can see it up ahead before he gets up 10 alongside the vehicle. 11 Q. Right. So you're relying simply on that 12 assertion, Ms. Perez's testimony, correct? 13 A. Well, and Mr. -- 14 Q. That, that he passed her before the accident? 15 A. That's one testimony from Ms. Perez. The other 16 testimony is that Mr. Boecken says he checks his mirrors 17 every three to five seconds. 18 Q. All right. And with respect to -- sorry. I cut 19 you off. 20 A. I'm sorry. If Ms. Perez is along side of the 21 truck he should be able to see her in his mirror. 22 Q. All right. And with respect to that opinion did 23 you actually inspect the tractor driven by Mr. Boecken to 24 confirm that sight line? 25 A. No.</p>

10:40:05-10:41:20 Page 82	10:42:37-10:44:00 Page 84
<p>1 Q. Okay. And you, correct me if I'm wrong, but you</p> <p>2 have not inspected any exemplar tractors with respect to</p> <p>3 your opinions in this case regarding that opinion as to</p> <p>4 what Mr. Boecken should or should not be able to see?</p> <p>5 A. No. Only from past experience sitting in the</p> <p>6 cab of a similar tractor. And it could be exemplar, for</p> <p>7 all I know. But tractors with nose mirrors or the like --</p> <p>8 and that's the reason they have a nose mirror up there in</p> <p>9 that position so that they can see down alongside the</p> <p>10 right side of the tractor, because notoriously that's a</p> <p>11 blind spot area.</p> <p>12 MR. FINLEY: Objection as nonresponsive after</p> <p>13 no.</p> <p>14 BY MR. FINLEY:</p> <p>15 Q. Have you done any type of experiments with</p> <p>16 regards to your opinions in this case, Mr. Nelson?</p> <p>17 A. What do you mean by that?</p> <p>18 Q. Have you conducted any type of an experiment to</p> <p>19 test any of your opinions in the case?</p> <p>20 A. No experiments.</p> <p>21 Q. Have you done any type of simulations of the</p> <p>22 accident with respect to your opinions?</p> <p>23 A. No.</p> <p>24 Q. Beyond the actual Bates labeled documents we</p> <p>25 talked about earlier today and the depositions that were</p>	<p>1 if I'm wrong, presume you would have gotten it from the</p> <p>2 plaintiff's attorney, that report?</p> <p>3 A. Yes, sir, that's correct.</p> <p>4 Q. Okay. Have you been provided any additional</p> <p>5 information by the plaintiff's attorney beyond</p> <p>6 Mr. Sievers' report or documents?</p> <p>7 A. None other than the notice of deposition.</p> <p>8 Q. Okay. Have you been asked to make any changes</p> <p>9 to your report since it was originally issued?</p> <p>10 A. No.</p> <p>11 Q. Do you have any changes, revisions, or</p> <p>12 corrections that you would like to make to your report at</p> <p>13 this time?</p> <p>14 A. No, sir.</p> <p>15 Q. Are the conclusions offered in your report all</p> <p>16 of your conclusions with respect to the accident in this</p> <p>17 case?</p> <p>18 A. At this time, yes.</p> <p>19 Q. Well, do you have any changes that you plan on</p> <p>20 making at this time or corrections or revisions?</p> <p>21 A. Not so far.</p> <p>22 Q. In coming to your conclusions rendered in this</p> <p>23 case did you adopt the, the version of the accident by</p> <p>24 Ms. Perez with respect to the blue Toyota not being</p> <p>25 present in front of my client's tractor immediately before</p>
10:41:22-10:42:33 Page 83	10:44:04-10:45:11 Page 85
<p>1 provided to you, have you reviewed any of the pleadings in</p> <p>2 this case?</p> <p>3 A. I don't believe I have any pleadings in this</p> <p>4 case.</p> <p>5 Q. Okay. Have you reviewed -- excuse me -- have</p> <p>6 you reviewed any of the written discovery answers provided</p> <p>7 in this case by the parties?</p> <p>8 A. That would be under pleadings if I had them.</p> <p>9 Q. Okay. Did you review any of the medical records</p> <p>10 for Ms. Perez?</p> <p>11 A. No.</p> <p>12 Q. Have you recommended to the plaintiff's attorney</p> <p>13 that there be additional work for you to perform in this</p> <p>14 case?</p> <p>15 A. No, sir, I have not.</p> <p>16 Q. Okay. Have you been asked by plaintiff's</p> <p>17 counsel to perform any additional work beyond that which</p> <p>18 you've already done?</p> <p>19 A. Not yet.</p> <p>20 Q. Since issuing your report, Mr. Nelson, have you</p> <p>21 been provided any additional information or documents by</p> <p>22 the plaintiff's attorney beyond, I believe you mentioning,</p> <p>23 the report of the Andy Sievers?</p> <p>24 A. That was defense offering, not plaintiff.</p> <p>25 Q. I understand that, but I'm saying I, and tell me</p>	<p>1 the accident on the highway?</p> <p>2 A. No. Not entirely. I also included the</p> <p>3 deposition testimony of Mr. Boecken.</p> <p>4 Q. Okay. Is it then reasonable to give equal</p> <p>5 weight, then, to the defendants' theory in the case</p> <p>6 regarding, or the defendants' version of the accident in</p> <p>7 this case regarding the blue Toyota in rendering your</p> <p>8 opinions?</p> <p>9 A. What do you mean weight, given weight?</p> <p>10 Q. Well, as you understand, Mr. Nelson, there is a</p> <p>11 version of the accident offered by Mr. Boecken which in</p> <p>12 some respect is different than that offered by Ms. Perez.</p> <p>13 Do you understand that?</p> <p>14 A. Yes, sir, I do.</p> <p>15 Q. Okay. And specifically I'm referring to the</p> <p>16 presence of the blue Toyota cutting him off immediately</p> <p>17 before the accident.</p> <p>18 Do you understand that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And my question then is because you have</p> <p>21 not done an accident reconstruction in this case or</p> <p>22 performed any of the underlying calculations or</p> <p>23 inspections, measurements, what have you, that would go</p> <p>24 into an accident reconstruction isn't it fair to give</p> <p>25 equal weight, then, in rendering your opinions to the</p>

10:45:13-10:46:39	Page 86	10:48:09-10:49:24	Page 88
<p>1 version of the accident offered by Mr. Boecken and that</p> <p>2 offered by Ms. Perez?</p> <p>3 A. I disagree.</p> <p>4 Q. Why would that be?</p> <p>5 A. Well, because of the testimony of Mr. Boecken,</p> <p>6 first of all. Let me talk about that for a minute.</p> <p>7 Mr. Boecken says that, first of all, he never</p> <p>8 sees this blue Toyota until it is up in front, to his</p> <p>9 left, and cutting over, cutting him off. And, again, we</p> <p>10 have the issue of he checks his mirrors every three to</p> <p>11 five seconds, and had he checked his mirrors every three</p> <p>12 to five seconds he would have seen the blue Toyota coming</p> <p>13 up on his left side, number one. Number two, he says the</p> <p>14 blue Toyota changes lanes in front of him and cuts him off</p> <p>15 and gets on the brakes, because he says, I saw the brake</p> <p>16 lights come on. And he was asked, well, how far were you</p> <p>17 from the blue Toyota at that time, and he said it must</p> <p>18 have been a couple of feet from my front bumper.</p> <p>19 And at that time Mr. Boecken testifies that he,</p> <p>20 he gets on his brakes and gets on them hard; he looks in</p> <p>21 his mirror to see if there is anybody over in the</p> <p>22 right-hand lane and turns on his turn signal, all in the</p> <p>23 matter of time where this blue Toyota is slowing by</p> <p>24 braking and he's two feet in front of the truck.</p> <p>25 That doesn't make any sense to me. There is too</p>	<p>1 the amount of space in between my client's tractor and the</p> <p>2 back end of the Toyota after being cut off, did you do any</p> <p>3 type of independent analysis or investigation to address,</p> <p>4 or confirm that amount of space, that amount of distance?</p> <p>5 A. The only analysis I had available to me to</p> <p>6 confirm that the Toyota was within two feet of the front</p> <p>7 bumper of the truck was Mr. Boecken's testimony.</p> <p>8 Q. Okay. So the answer would be no to that</p> <p>9 question, then, that you did another type of independent</p> <p>10 investigation or analysis with respect to that distance?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. With respect to the opinions regarding, I</p> <p>13 believe your testimony was that it was ludicrous that he</p> <p>14 could change it into neutral when applying the brakes and</p> <p>15 changing lanes from left to right.</p> <p>16 Did you do any type of independent analysis or</p> <p>17 investigation with respect to confirming that opinion?</p> <p>18 A. No. It's just my experience in driving trucks</p> <p>19 in performing litigation services and collision events.</p> <p>20 Q. No simulation of this accident, correct?</p> <p>21 A. That's correct. But I didn't need to.</p> <p>22 Q. You did not perform a reconstruction of the</p> <p>23 accident, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. I believe there at the end you testified</p>		
10:46:43-10:48:05	Page 87	10:49:33-10:50:34	Page 89
<p>1 much time involved for him to do all these things and not</p> <p>2 hit this blue Toyota. And, as a matter of fact, he never</p> <p>3 touches the blue Toyota by his application of his brakes.</p> <p>4 Then, when he accomplishes all that he makes a move to the</p> <p>5 right-hand lane and impacts the side of the Perez vehicle.</p> <p>6 So all this doesn't make any sense to me in</p> <p>7 terms of a professional driver, what he's talking about.</p> <p>8 In fact, along with that, at the same time that he said I</p> <p>9 got on the brakes so hard I through it in neutral so I</p> <p>10 wouldn't stall the engine. That's ludicrous. So his</p> <p>11 testimony isn't making any sense to me.</p> <p>12 Ms. Perez's testimony is that she's driving</p> <p>13 along and all of a sudden this semi decides to change</p> <p>14 lanes and hits her in the side of the car, which is really</p> <p>15 what happened.</p> <p>16 Q. You've given me a lot there, Mr. Nelson, and I'm</p> <p>17 going to go back with you and address some of it. Okay?</p> <p>18 With respect to your opinions regarding never</p> <p>19 seeing the blue Toyota and that he should have if he was</p> <p>20 checking his mirrors every three to five seconds.</p> <p>21 Did you do any type of analysis or calculations</p> <p>22 to confirm that the blue Toyota did not come upon him in</p> <p>23 less than three seconds?</p> <p>24 A. No.</p> <p>25 Q. Okay. With regards to the testimony regarding</p>	<p>1 that this accident was, and correct me if I'm wrong, but I</p> <p>2 believe your words were it was a simple lane change</p> <p>3 collision, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. With respect to conclusions regarding --</p> <p>6 go ahead.</p> <p>7 A. That being an unsafe lane change. Let me add</p> <p>8 that.</p> <p>9 Q. And, actually, that's your opinion, right, an</p> <p>10 unsafe lane change.</p> <p>11 With respect to the cause of the accident you</p> <p>12 would agree with me that the jury could review the</p> <p>13 testimony of Ms. Perez and Mr. Boecken on the road and</p> <p>14 come to their own conclusions regarding the cause,</p> <p>15 correct?</p> <p>16 MR. FISCHER: Object to form.</p> <p>17 THE WITNESS: Yeah, I don't know how to answer</p> <p>18 that one for you.</p> <p>19 BY MR. FINLEY:</p> <p>20 Q. Why don't you know how to answer that?</p> <p>21 A. Because I'm not on the jury.</p> <p>22 Q. Well, I understand that, but from your review of</p> <p>23 the deposition testimony in this case would you agree that</p> <p>24 the jury can review that testimony of Ms. Perez and</p> <p>25 Mr. Boecken and come to their own conclusions regarding</p>		

10:50:38-10:51:44	Page 90	10:53:22-11:05:50	Page 92
<p>1 the cause of the accident?</p> <p>2 MR. FISCHEL: Same objection.</p> <p>3 THE WITNESS: Yeah, I can't answer that for you.</p> <p>4 BY MR. FINLEY:</p> <p>5 Q. Is it the same answer, because you're not on the</p> <p>6 jury?</p> <p>7 A. I can't answer that. That's something for the</p> <p>8 jury to decide.</p> <p>9 Q. Okay. And I'm just clarifying your answer, what</p> <p>10 you gave me earlier.</p> <p>11 You're saying because you're not on the jury.</p> <p>12 Is that correct?</p> <p>13 A. Well, that's a jury decision, not mine.</p> <p>14 Q. Okay. We talked about this earlier, but with</p> <p>15 respect to any type of literature or research in this case</p> <p>16 it would be limited to the commercial motor vehicle</p> <p>17 handbook in Texas that you referred to earlier and the</p> <p>18 Federal Motor Carrier Safety Regulations, correct?</p> <p>19 A. In terms of literature, yes, sir.</p> <p>20 Q. Okay. This was provided earlier, but with</p> <p>21 respect to -- by you before the deposition -- but with</p> <p>22 respect to any notes you have, handwritten notes you have</p> <p>23 regarding your opinions in this case and the investigation</p> <p>24 you performed, those would be on the notes you provided,</p> <p>25 correct?</p>		<p>1 Q. All right. And these are the only notes you</p> <p>2 have that you performed, or I'm sorry, prepared on your</p> <p>3 own with regards to the work you've done in this case.</p> <p>4 A. That's right.</p> <p>5 MR. FINLEY: All right.</p> <p>6 Let's take a real quick break for a couple</p> <p>7 minutes. We're off the record.</p> <p>8 THE VIDEOGRAPHER: Going off the record at 10:54</p> <p>9 a.m.</p> <p>10 (Recess taken from 10:54 a.m. to 11:05 a.m.)</p> <p>11 (Exhibit 6 was marked for identification.)</p> <p>12 THE VIDEOGRAPHER: We are back on the record at</p> <p>13 11:05 a.m.</p> <p>14 BY MR. FINLEY:</p> <p>15 Q. Okay. Mr. Nelson, we are back on the record</p> <p>16 now.</p> <p>17 Are you ready to proceed forward?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. The actual contract that you have for the</p> <p>20 services you're providing in this case we have that marked</p> <p>21 here as the retainer agreement, I believe as Exhibit No. 6</p> <p>22 to your deposition.</p> <p>23 Do you see that in front of you?</p> <p>24 A. Yes, sir, I do.</p> <p>25 Q. Okay. Is this just a one page document?</p>	
10:51:44-10:53:21	Page 91	11:05:52-11:07:28	Page 93
<p>1 A. No, sir. The notes I provided were typed on the</p> <p>2 computer, not handwritten.</p> <p>3 Q. Okay. I'm sorry. I misspoke on handwriting.</p> <p>4 But any notes you have are typed out, correct?</p> <p>5 A. Yes.</p> <p>6 MR. FINLEY: All right. And I believe we have</p> <p>7 those. If the court reporter could have those marked as</p> <p>8 Exhibit No. 9 and attach to the deposition please.</p> <p>9 (Exhibit 9 was marked for identification.)</p> <p>10 BY MR. FINLEY:</p> <p>11 Q. And, if we have those pulled up there,</p> <p>12 Mr. Boecken -- I'm sorry -- Mr. Nelson, in front of you</p> <p>13 you have notes and you have titled Notes/2019041. Is that</p> <p>14 correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. All right. In reviewing this document,</p> <p>17 Mr. Nelson, the notes that are on here specifically refer</p> <p>18 to the deposition testimony of Jessica Perez, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And Alvin Boecken?</p> <p>21 A. Yes.</p> <p>22 Q. The notes that you have on here do not refer to</p> <p>23 anything else with regards to your review of this case</p> <p>24 beyond deposition testimony. Am I correct?</p> <p>25 A. Correct.</p>		<p>1 A. There's two pages.</p> <p>2 Q. Two pages to it. Okay. And I'm just asking</p> <p>3 because the screen I have -- there it is, a second page.</p> <p>4 All right.</p> <p>5 Do you have any other agreements of any kind</p> <p>6 related to your work in this case with Mr. Fischel?</p> <p>7 A. No, sir, I do not.</p> <p>8 Q. Do you have any other agreements of any kind</p> <p>9 with any other entities or individuals related to the work</p> <p>10 you're performing in this case?</p> <p>11 A. No, sir.</p> <p>12 Q. All right. Mr. Boecken -- I'm sorry --</p> <p>13 Mr. Nelson, I'd like to go ahead and attach as Exhibit</p> <p>14 No. 10 to your deposition a copy of your report you wrote</p> <p>15 in this case.</p> <p>16 (Exhibit 10 was marked for identification.)</p> <p>17 BY MR. FINLEY:</p> <p>18 Q. And that's the report in front of you,</p> <p>19 Mr. Nelson.</p> <p>20 Is that the report you drafted in this case?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And that's the only report you drafted, correct?</p> <p>23 A. It's the only one.</p> <p>24 Q. All right. With regards to the report itself on</p> <p>25 page one we have a list here of all the items that you</p>	

11:07:33-11:08:48 Page 94	11:10:04-11:11:51 Page 96
<p>1 reviewed in formulating your opinions. Is that correct?</p> <p>2 A. Well, let's see. So far on the first page, yes.</p> <p>3 Q. All right. And if we scroll on, then, to the</p> <p>4 second page we have a seventh item being the Federal Motor</p> <p>5 Carrier Safety Regulations.</p> <p>6 That encompasses all the items that you relied</p> <p>7 upon and reviewed to prepare your opinions, correct?</p> <p>8 A. In terms of literature, yes, sir.</p> <p>9 Q. Okay. What are the other items not listed in</p> <p>10 this report that you relied upon, then?</p> <p>11 A. It would be my training, knowledge, and</p> <p>12 experience in the analysis of commercial motor vehicle</p> <p>13 collisions.</p> <p>14 Q. Okay. Anything else besides what's listed in</p> <p>15 report, then, aside from what you just said regarding your</p> <p>16 experience?</p> <p>17 A. No.</p> <p>18 Q. Okay. Now, on page two here we have got four</p> <p>19 conclusions. These opinions and conclusions, these four,</p> <p>20 Mr. Nelson, are they the only four opinions and</p> <p>21 conclusions you have rendered in this case?</p> <p>22 A. That's correct.</p> <p>23 Q. All right. You have not edited or revised this</p> <p>24 report since it was drafted, correct?</p> <p>25 A. Yes, that's correct.</p>	<p>1 A. It is simply -- the regulation is 391.11. It</p> <p>2 effectively says that the individual -- let me get it in</p> <p>3 front of me. You know, you would think I'd memorize this</p> <p>4 book by now. I can't do it yet. All right.</p> <p>5 One part of the qualification process is that</p> <p>6 the individual can, by reason of experience, training, or</p> <p>7 both, safely operate the type of commercial motor vehicle</p> <p>8 that he drives. Well, making an unsafe lane change is not</p> <p>9 safely operating the vehicle. Number two --</p> <p>10 Q. Well, let me stop you there because we're</p> <p>11 focused on No. 1 regarding maintaining a proper lookout.</p> <p>12 And my question with regards to obligation to maintain a</p> <p>13 proper lookout was which regulation or what specifically</p> <p>14 are you relying upon for that obligation, and you told me</p> <p>15 391.11. Is that correct?</p> <p>16 A. Yes. 391.11(b)(3). And, secondly, to maintain</p> <p>17 a proper lookout is contained within the Texas CDL Manual.</p> <p>18 It speaks of the regulations that a professional driver</p> <p>19 needs to put in practice as he is driving down the road.</p> <p>20 Q. Which specific section of the manual are you</p> <p>21 referring to?</p> <p>22 A. Probably under seeing --</p> <p>23 Q. I'm sorry. Go ahead.</p> <p>24 A. It's called seeing in the CDL manual.</p> <p>25 Q. Scene as in like S-C-E-N-E, scene?</p>
11:08:49-11:10:01 Page 95	11:11:56-11:13:00 Page 97
<p>1 Q. All right. You have not come to any additional</p> <p>2 opinions and conclusions, correct?</p> <p>3 A. Correct.</p> <p>4 Q. All right. With respect to the first three</p> <p>5 opinions and conclusions those three relate to</p> <p>6 Mr. Boecken's actions concerning the accident. Is that</p> <p>7 fair to say?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. And your three opinions in that section</p> <p>10 there on page two, for each of them you refer to an</p> <p>11 obligation that he has with respect to maintaining a</p> <p>12 proper lookout, managing space, and initiating a lane</p> <p>13 change.</p> <p>14 When you identify these things as obligations</p> <p>15 what are you relying upon in terms of them being</p> <p>16 obligations?</p> <p>17 A. Well, he has an obligation to operate the</p> <p>18 vehicle in a safe manner in accordance with federal</p> <p>19 regulation and state regulation since Texas adopted the</p> <p>20 federal regulation, so --</p> <p>21 Q. Okay. So -- I'm sorry. I cut you off.</p> <p>22 A. I said they are essentially the same thing.</p> <p>23 Q. With regards, then, to the first one,</p> <p>24 maintaining a proper lookout, which specific regulation</p> <p>25 are you relying upon, then, for the obligation?</p>	<p>1 A. No, no. S-E-E-I-N-G.</p> <p>2 Q. Oh, seeing. Okay.</p> <p>3 A. It's subsection seeing ahead, seeing to the</p> <p>4 rear, seeing to the sides, the use of mirrors, et cetera.</p> <p>5 Q. And which specific, is that -- you're just</p> <p>6 giving me the title of the section.</p> <p>7 Is that a chapter, a specific number?</p> <p>8 A. Yes. It's a subsection in --</p> <p>9 Q. What number is that?</p> <p>10 A. -- Chapter 2.</p> <p>11 Q. Okay. With regards to managing space around his</p> <p>12 vehicle at all times, your second conclusion there, or</p> <p>13 opinion. What are you relying upon for the obligation to</p> <p>14 do so?</p> <p>15 A. That would be also in the reference, the</p> <p>16 commercial driver's license manual.</p> <p>17 Q. Is it solely in the manual, or are you referring</p> <p>18 to a regulation as well?</p> <p>19 A. No. There's no regulation to manage the space</p> <p>20 around his vehicle.</p> <p>21 Q. All right. And then with regards to the -- I'm</p> <p>22 sorry. I cut you off.</p> <p>23 A. It's only the custom and practice and industry</p> <p>24 standard as recommended by the commercial driver's license</p> <p>25 manual.</p>

<p>11:13:01-11:14:10 Page 98</p> <p>1 Q. And so for this industry standard and custom 2 practice, again, you're referring to the manual for that 3 opinion, correct? 4 A. Yes, sir. 5 Q. All right. And what specific chapter or subpart 6 of that manual are you referring to? 7 A. That would be under managing space, and I don't, 8 I don't know right now where it's at. I'd have to look it 9 up. 10 Q. But you believe it's found under a section 11 titled managing space? 12 A. I know it's in chapter 2 because that's, that is 13 the information on the operation of a commercial vehicle, 14 and those things are listed in subchapters, in chapters. 15 Q. Okay. All right. And then the third opinion 16 there with regards to obligation to initiate a safe lane 17 change, where are you basing -- or what are you basing the 18 obligation on there? 19 A. That would be the, again, the information 20 contained in the commercial driver's license manual and 21 state law. 22 Q. Okay. Specifically the manual, which part of 23 the manual refers to that or discusses that? 24 A. That would be under chapter 2, whatever 25 subchapter is contained within that.</p>	<p>11:15:39-11:16:38 Page 100</p> <p>1 A. I do. 2 Q. Okay. (B)(3) is found under qualification and 3 disqualification of drivers. Is that right, in subpart 4 (b)? 5 A. Yes, sir, that's correct. 6 Q. Okay. And (b)(3), if you have a copy in front 7 of you, states that -- (b) says, except as provided in 8 subpart G of this part a person that's qualified to drive 9 a motor vehicle if he/she can, subpart (3), by reason of 10 experience, training, or both, safely operate the type of 11 commercial motor vehicle he/she drives. 12 Did I read that correctly? 13 A. Yes, sir, you did. 14 Q. Okay. With regards to that specific section did 15 you see anything in there regarding an obligation to 16 maintain a proper lookout specifically? 17 A. No. Not in this section. That -- 18 Q. Okay. 19 A. That would be something contained within the CDL 20 manual. 21 Q. All right. Within that section do you see 22 anything regarding effectively managing space? 23 A. No. 24 Q. Okay. And then within that section is there 25 anything that speaks to initiating a safe lane change?</p>
<p>11:14:14-11:15:37 Page 99</p> <p>1 Q. And then what specific state law are you 2 referring to for Texas? 3 A. Oh, I'd have to look that one up. I'm sure it's 4 545 something. I'm not sure what that is. 5 Q. When you're saying 545 can you give me -- are 6 you referring to a specific body of law? 7 A. Yeah. I'm referring to -- 8 Q. Or code? 9 A. -- a specific code for lane changes in Texas, 10 transportation code. 11 Q. You're just not sure what code that is? 12 A. I'm not sure right now. I'd have to bring it 13 up. 14 Q. Okay. Are you referring or relying upon any 15 other code, regulation, or literature otherwise, besides 16 the CDL manual and that, that code, or section you're 17 referring to in the code for initiating a safe lane 18 change? 19 A. And the regulations. 20 Q. Which regulation is that? 21 A. The one I testified to earlier, 391.11. 22 Q. Okay. Is that also (b)(3)? 23 A. Yes. 24 Q. Now, focusing then on (b)(3), Mr. Nelson, do you 25 have a copy of that in front of you?</p>	<p>11:16:41-11:17:55 Page 101</p> <p>1 A. Well, yes. Because it's an unsafe lane change, 2 therefore, he is not safely operating the commercial 3 vehicle. 4 Q. So you're taking that -- or you derive that 5 opinion from that section. Is that correct? Or that 6 subsection? 7 A. That's one place, yes. 8 Q. Okay. Does it say lane change anything in 9 there? 10 A. It doesn't speak of lane change. It's an unsafe 11 maneuver. 12 Q. Beyond the regulations, specific regulation, 13 and, and CDL manual and the code section we talked about 14 now, have you relied upon any other codes, regulation, or 15 literature for these first three opinions in formulating 16 your opinion? 17 A. Well, of course, I've relied upon the police 18 report also. 19 Q. All right. Beyond that any other literature? 20 A. No, sir. 21 Q. Okay. And with respect to the opinions 22 regarding managing of space, maintaining a proper lookout, 23 and initiating a safe lane change, you have not done any 24 type of calculations on speed, have you? 25 A. Correct.</p>

<p>11:17:55-11:19:16 Page 102</p> <p>1 Q. Okay. You have not done any type of testing or 2 experiments to verify these opinions, correct, with regard 3 to how the accident occurred? 4 A. I didn't need to do any testing or experience to 5 render these opinions. 6 MR. FINLEY: Object to nonresponsive to that 7 response. 8 BY MR. FINLEY: 9 Q. Did you do any testing or experiments at all? 10 A. What do you mean by experience? 11 Q. I'm sorry. Experiments. 12 A. Oh, experiments. No. No testing or 13 experiments. 14 Q. Okay. 15 A. It didn't require that. 16 MR. FINLEY: Objection; nonresponsive after no. 17 BY MR. FINLEY: 18 Q. Now, with regards to your last conclusion there 19 in your report, Mr. Nelson, focusing on that. As I read 20 your report, Mr. Nelson, it looks like you have various 21 subparts to that conclusion. Is that correct? 22 A. Well, yes, I suppose. 23 Q. And by that I mean your report goes into detail 24 as you go on past page two regarding the various areas 25 that you believe CAB Transport failed in requirements that</p>	<p>11:20:32-11:21:53 Page 104</p> <p>1 Q. I have got a lot of names, sir. I'm doing my 2 best. 3 A. Yes, that's correct. 4 Q. Okay. Now, under the regulations, and that 5 being specifically 391.33, a motor carrier can accept a 6 driver's license as an equivalent of doing the road test. 7 Is that correct? 8 A. Yes, they can. But there's a caveat with that, 9 because if they do that there is no way that the motor 10 carrier can know if this individual can safely operate a 11 commercial vehicle. The only way -- 12 Q. And that is -- go ahead. 13 A. The only way to do that is to offer and 14 administer a road test so that you can evaluate the 15 driver's ability, skill, knowledge, training so that he 16 knows how to safely operate the commercial vehicle. 17 Q. And with regards to that last part of your 18 answer, or is that your answer itself, after acknowledging 19 they can't accept the driver's license as an equivalent? 20 That following part of your answer regarding the ability 21 or inability to know if he can safely operate a vehicle, 22 do you have any literature or regulation that you rely 23 upon for that opinion? Or is that simply your opinion? 24 A. Yes. There is -- or let me put it this way. 25 There was a memo distributed by the Department of</p>
<p>11:19:25-11:20:25 Page 103</p> <p>1 they have under the regulation. Is that fair to say? 2 A. Yes. 3 Q. All right. One of those, Mr. Boecken, if I'm 4 not, if I read your report correctly, refers to a road 5 test. Is that right? 6 A. I'm Mr. Nelson. 7 Q. Go ahead. I'm sorry? 8 A. I said, I'm Mr. Nelson. I'm not Mr. Boecken. 9 Q. I'm sorry. Did I call you Mr. Boecken? 10 A. Now, see how you are? 11 Q. I'm sorry? 12 A. See how you are? 13 Q. I can't -- I don't understand what you're 14 saying. I'm sorry. 15 A. I said, see how you are? 16 Q. Oh, I apologize if I called you by the wrong 17 name. 18 Mr. Nelson, one of your opinions in this case 19 regards the road test. Is that correct? 20 A. Yes. 21 Q. Okay. And specifically, if I read your report 22 correctly, your opinion is that they failed to render or 23 provide a road test to Mr. Nelson -- I'm sorry -- 24 Mr. Boecken. Excuse me. 25 A. You know what, your hero status is fading here.</p>	<p>11:21:57-11:23:16 Page 105</p> <p>1 Transportation long ago, I think it's back in the '90s 2 that spoke to that very issue, that if a motor carrier 3 decides to accept an individual's valid commercial 4 driver's license in lieu of a road test, that only means 5 he managed to pass minimal qualifications to get a 6 driver's license. In no way does it mean, or lend itself 7 to the idea that he can safely operate a commercial 8 vehicle. It only means he has a driver's license. 9 Q. What is the -- which means he was -- and he was 10 provided that by a governing state agency, correct? 11 A. That's correct. 12 Q. After he satisfied the requirements of that 13 state to obtain a commercial driver's license, correct? 14 A. That's correct. 15 Q. All right. And the memo you're referring to, do 16 you know the name of that memo? 17 A. It's an On Guard publication or article, DOT 18 issued. And I don't have it handy with me, but I can 19 certainly come up with it. 20 Q. When was it issued by DOT? 21 A. I don't remember what year. Maybe 1997, I'm not 22 sure. 23 Q. And just to be clear on the record, when you say 24 DOT you're referring to the U.S. Department of 25 Transportation?</p>

11:23:16-11:24:19	Page 106	11:25:55-11:27:41	Page 108
<p>1 A. Yes, sir.</p> <p>2 Q. Okay.</p> <p>3 A. They warned, in fact the article warned against</p> <p>4 simply accepting a driver's license in lieu of a road</p> <p>5 test.</p> <p>6 Q. But yet there is a regulation issued by the</p> <p>7 Federal Motor Carrier Safety Administration that allows a</p> <p>8 motor carrier to do just that, correct?</p> <p>9 A. That's right. And then after that regulation</p> <p>10 came into effect they issued the memo, because there were</p> <p>11 some issues involved with that.</p> <p>12 Q. And if they comply with that regulation,</p> <p>13 accepting the license, they are in compliance -- in lieu</p> <p>14 of the road test -- they are in compliance with the</p> <p>15 regulation as written. Is that correct?</p> <p>16 A. That's true, but in this case there's no copy of</p> <p>17 a driver's license in his file either.</p> <p>18 Q. Do you have any evidence to show that he does</p> <p>19 not have a driver's license when he was starting to work</p> <p>20 for Jim Ballard d/b/a CAB Transport?</p> <p>21 A. The only information I have is what's included</p> <p>22 in the police report. The police report indicates that he</p> <p>23 has a Class A commercial driver's license. I don't know</p> <p>24 if it's expired, if he's disqualified, if it's valid, or</p> <p>25 what the status is because there is no motor vehicle</p>	<p>1 here the report for you, or where in the report. That</p> <p>2 would be, sir, on page three and that would be the second</p> <p>3 to last paragraph.</p> <p>4 A. Okay.</p> <p>5 Q. And in looking at that paragraph, Mr. Nelson,</p> <p>6 you talk about hard braking being used by Mr. Boecken when</p> <p>7 contact was made, but yet you were talking about the</p> <p>8 damage as you see in the photographs indicating no</p> <p>9 repeated circular pattern overlapping damage indicating</p> <p>10 one vehicle was traveling faster or slower than the other.</p> <p>11 Is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. All right. In your opinion are you, I take it</p> <p>14 from reading that, disputing the relative speed of the</p> <p>15 vehicles at contact?</p> <p>16 A. No.</p> <p>17 Q. Okay. What are you saying in that paragraph?</p> <p>18 A. Well, I'm saying that, since Mr. Boecken</p> <p>19 testified that he was braking hard and then moved to the</p> <p>20 right at the same time Ms. Perez is accelerating to get</p> <p>21 away from the side of the truck -- so now I have Ms. Perez</p> <p>22 accelerating; we have Mr. Boecken braking hard, as he</p> <p>23 says, which tells me he has slammed on the brakes to slow</p> <p>24 that truck -- when contact is made, in my experience</p> <p>25 anyway, the damage that is shown on the side of the Perez</p>		
11:24:24-11:25:50	Page 107	11:27:46-11:29:03	Page 109
<p>1 report included in the case file for this individual.</p> <p>2 Q. Have you reviewed on your own, independently of</p> <p>3 what's been provided to you, any information on file with</p> <p>4 the State of Oklahoma regarding the commercial driver's</p> <p>5 license or driving history of Mr. Boecken?</p> <p>6 A. I have not reviewed any document that speaks to</p> <p>7 that.</p> <p>8 Q. Have you reviewed a copy of the driver's license</p> <p>9 report, driving history report, provided in this case on</p> <p>10 behalf of our clients, the plaintiff, related to</p> <p>11 Mr. Boecken?</p> <p>12 A. I don't have that.</p> <p>13 Q. Okay. With regards to the opinions you rendered</p> <p>14 in this case regarding Mr. Boecken's qualifications to</p> <p>15 operate a motor vehicle, you did not do any independent</p> <p>16 investigation of such beyond the documents provided to</p> <p>17 you. Is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. With regards to the damage that was seen</p> <p>20 on the plaintiff's vehicle, which you referred to</p> <p>21 reviewing earlier in this case, you offer an opinion in</p> <p>22 your report regarding the relative speed of the vehicles</p> <p>23 at impact. Is that correct?</p> <p>24 A. Yes, generally.</p> <p>25 Q. Okay. And concerning that -- and I'll reference</p>	<p>1 vehicle would indicate that the, the circular damage from</p> <p>2 the right front wheel of the truck would not stay in one</p> <p>3 place, but the circular pattern would move along the side</p> <p>4 of the car if one car was going faster than the other, or</p> <p>5 one vehicle, I'm sorry, was going faster. And you don't</p> <p>6 see that. I see the circular pattern kind of remaining in</p> <p>7 one particular area rather than moving alongside of the</p> <p>8 car.</p> <p>9 So I just came to the conclusion that both</p> <p>10 vehicles were traveling about the same speed when impact</p> <p>11 occurred.</p> <p>12 Q. With regards to that portion of your opinion</p> <p>13 there you allude to a period of time when contact was</p> <p>14 made, or when the vehicles were engaged itself.</p> <p>15 Do you have any evidence to show that there was</p> <p>16 actually a period of time that they were engaged together</p> <p>17 beyond the testimony of the two drivers in this case?</p> <p>18 A. No.</p> <p>19 Q. Okay. Do you have any evidence to show that it</p> <p>20 may have been -- or let me strike that.</p> <p>21 Have you done any independent analysis or</p> <p>22 investigation as to the amount of time that the vehicles</p> <p>23 were engaged together during this accident?</p> <p>24 A. No. The only thing I see so far is that one</p> <p>25 vehicle is not going much faster than the other vehicle,</p>		

11:29:07-11:30:24 Page 110	11:32:07-11:33:19 Page 112
<p>1 otherwise there would be a change in damage. In --</p> <p>2 Q. Okay. And again that is -- sorry to cut you</p> <p>3 off.</p> <p>4 A. In my experience anyway. And I have seen a</p> <p>5 lot --</p> <p>6 Q. And again that -- I'll let you finish your</p> <p>7 answer. I'm sorry.</p> <p>8 A. I said, and I have seen a lot of these types of,</p> <p>9 a lot of this type of damage.</p> <p>10 Q. Okay. You're basing it on your experience.</p> <p>11 Are you basing that opinion on any literature or</p> <p>12 research?</p> <p>13 A. No. I am not. Only the pictorial evidence of</p> <p>14 the physical damage, in my experience, and seeing the same</p> <p>15 types of damage with the same types of speed differentials</p> <p>16 relative to one another. In other words, relative from</p> <p>17 one vehicle to the other.</p> <p>18 Q. Okay. And you're not basing it on any speed</p> <p>19 calculations of the vehicles in this case, correct?</p> <p>20 A. No. I'm not.</p> <p>21 Q. Or measurements of the damage that you see in</p> <p>22 the photographs?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. With regards to Mr. Boecken's driving</p> <p>25 experience and qualifications are you rendering your</p>	<p>1 48 years.</p> <p>2 Q. Okay. And with regards to his testimony</p> <p>3 regarding his driving history over that time have you</p> <p>4 conducted any type of investigation to, to look into what</p> <p>5 he said regarding his prior accident history, moving</p> <p>6 violation history, to dispute what he testified to?</p> <p>7 A. I don't have any documentation to that effect.</p> <p>8 I'm only going by testimony and what he describes as the</p> <p>9 actions, or the lack thereof, that he takes action during</p> <p>10 the collision event.</p> <p>11 Q. Okay. That, that summarizes the basis of your</p> <p>12 opinions regarding his qualification to operate the</p> <p>13 vehicle?</p> <p>14 A. Well, no, also the Federal Motor Carrier Safety</p> <p>15 Regulations come into play.</p> <p>16 Q. Okay. And which, okay, which regulations are</p> <p>17 those then?</p> <p>18 A. I have them listed in my report, I believe.</p> <p>19 Q. Okay. And we've talked about 391.11(b)(3),</p> <p>20 correct?</p> <p>21 A. 391 in general, yes.</p> <p>22 Q. Okay. What other specific regulations, then,</p> <p>23 are you relying on?</p> <p>24 A. 391.21, which is the application for employment.</p> <p>25 There is none. And, incidentally, those two regulations</p>
11:30:29-11:32:04 Page 111	11:33:25-11:34:42 Page 113
<p>1 opinions in this case solely on documentation that is in</p> <p>2 his file that was provided to you and documentation that</p> <p>3 you did not receive?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. The opinions regarding his qualifications</p> <p>6 and ability to safely operate a vehicle are based solely</p> <p>7 on documents you have and that you don't have, correct?</p> <p>8 A. Could you ask me that one more time, please?</p> <p>9 Q. Sure. Your opinions regarding Mr. Boecken's</p> <p>10 ability to safely operate his vehicle, are those based</p> <p>11 solely on the documentation that was provided to you and</p> <p>12 not provided to you?</p> <p>13 A. No. Also on some of his testimony.</p> <p>14 Q. And specifically what testimony?</p> <p>15 A. Well, the testimony of his actions in this</p> <p>16 collision event and his testimony that he's never seen the</p> <p>17 CDL manual, never looked at it.</p> <p>18 Q. Are you talking about the Texas CDL manual?</p> <p>19 A. Or any CDL manual for that matter. Because --</p> <p>20 Q. Did he -- go ahead.</p> <p>21 A. -- those are all the same, with little</p> <p>22 exception.</p> <p>23 Q. And how long, to your understanding, has</p> <p>24 Mr. Boecken been operating commercial motor vehicles?</p> <p>25 A. Almost 50 years, somewhere in that area,</p>	<p>1 are prefaced by a person shall not drive unless he's</p> <p>2 qualified. And a person --</p> <p>3 Q. If he -- go ahead. Sorry.</p> <p>4 A. And a person shall not drive unless he's</p> <p>5 submitted an application that is in conformance with the</p> <p>6 regulation.</p> <p>7 Q. Have you seen any testimony, or other evidence,</p> <p>8 from Ballard, from Jim Ballard from CAB Transport that</p> <p>9 they did not obtain an application from Mr. Boecken?</p> <p>10 A. I don't have a deposition from Mr. Ballard.</p> <p>11 Q. Okay. With regards to investigation and</p> <p>12 inquiries have you seen any testimony from Mr. Ballard, or</p> <p>13 other evidence, to confirm they did not submit any</p> <p>14 investigations or inquiries from primary employers for</p> <p>15 Mr. Ballard?</p> <p>16 A. I don't have anything on record to indicate --</p> <p>17 Q. I mean Mr. Boecken. I misspoke. I meant for</p> <p>18 Mr. Boecken in that question.</p> <p>19 A. I don't have anything on record to indicate</p> <p>20 that.</p> <p>21 Q. Okay. That they did not do it?</p> <p>22 A. Right.</p> <p>23 Q. Okay. With respect to preemployment drug</p> <p>24 testing, do you have anything on the record in evidence or</p> <p>25 testimony that indicates or confirms they did not perform</p>

11:34:46-11:36:21 Page 114

1 a drug test for Mr. Boecken for, or when he was hired?
2 A. I don't have any documentation that reflects
3 that. The only drug test I see happened almost two
4 years -- well, more than two years prior to the date of
5 the collision.
6 Q. With respect to your report -- and I'm looking
7 specifically at page five, Mr. Nelson -- you say there's
8 little doubt, in your opinion, that CAB Transport was in
9 violation of several federal regulations.
10 The regulations that you're referring to in that
11 sentence, are all of those listed in your report?
12 A. Yes.
13 Q. Okay. And so I can rely upon that to find the
14 specific regulations contained in your report that you
15 refer to in that sentence.
16 A. Yes.
17 Q. Okay. With regards to the specific cause of
18 action the plaintiff's pled in this case, Mr. Nelson, are
19 you aware of those?
20 A. I'm sorry?
21 Q. With regards to the specific causes of action or
22 claims that have been pled by Mrs. Perez in this case are
23 you aware of those?
24 A. No. I don't have any pleadings.
25 Q. Okay. All right. So you do not know what type

11:36:25-11:37:36 Page 115

1 of cause of action or Texas law she has pled for in this
2 case against my client?
3 A. I don't have any pleadings.
4 Q. Okay. With regards to the final -- go ahead.
5 Did you say something?
6 A. No.
7 Q. Okay. With regards, then, to the final or near
8 the final end of your report there you make a statement
9 that, in summary, CAB Transport allowed an unqualified,
10 unsafe driver to operate their vehicle and that
11 Mr. Boecken had an obligation to operate the vehicle in a
12 safe manner and -- excuse me -- failed to do so. You go
13 on to state that, as a result, CAB Transport and
14 Mr. Boecken consciously disregards the safety and welfare
15 of the motoring public.
16 Did Mr. Boecken ever testify to the fact that he
17 was aware of Ms. Perez was on the highway?
18 A. He never saw the Perez vehicle until impact.
19 Q. That's right. So he never confirmed or
20 testified that he was aware she was there, correct?
21 A. Correct.
22 Q. All right. And there has been no testimony that
23 has been provided to date to you from CAB Transport,
24 correct? Or from Jim Ballard?
25 A. What from Jim Ballard now?

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1 Q. There's been no testimony provided to you from
2 Jim Ballard in this case, correct?
3 A. Correct.
4 Q. All right. And you're not in position, then, to
5 make an opinion as to regards to either Jim Ballard or
6 Mr. Boecken consciously disregarding the safety and
7 welfare of the public, are you?
8 A. Well, when you don't qualify a driver and you
9 allow him to operate a commercial vehicle on your behalf
10 and that driver makes an unsafe maneuver and creates
11 injury to someone else, I'd say that's a conscious
12 disregard to the welfare and safety of the motoring
13 public. I mean, they have --
14 Q. With regard -- go ahead.
15 A. They have -- the motor carrier has certain
16 things they have to do to qualify a driver, otherwise he
17 cannot be behind the wheel of a commercial vehicle.
18 And in this case Mr. Boecken should have never
19 been behind the wheel of a commercial vehicle unless he's
20 qualified to do so. You can't just look the other way and
21 toss the driver a set of keys and say, here you go, you
22 can drive the truck for me.
23 Q. And you have received no testimony to that
24 effect in this case, have you?
25 A. That he wasn't qualified?

11:38:43-11:39:44 Page 117

1 Q. No. You've received no testimony from either
2 Alvin Boecken or Jim Ballard that they simply tossed him
3 the keys and did nothing else in this case, did you?
4 A. No. Absolutely not.
5 Q. Okay. And, and with regards to the accident
6 itself and the actions of Mr. Boecken with regards to
7 attempting a lane change, you believe that it was
8 inadvertent on his part, correct?
9 MR. FISCHER: I'm going to object to form.
10 THE WITNESS: It was what? It was what on his
11 part?
12 BY MR. FINLEY:
13 Q. You believe that his actions were inadvertent.
14 A. Inadvertent?
15 Q. Yes. That he had an error of judgment.
16 Do you believe that?
17 MR. FISCHER: I'm going to object to form.
18 THE WITNESS: Not only an error of judgment.
19 It's absolute unsafe driving practices.
20 BY MR. FINLEY:
21 Q. Okay. And you believe he made a mistake?
22 A. It's more than a mistake. He's a professional
23 driver.
24 Q. With regards to the accident itself he testified
25 he wasn't aware that Ms. Perez was there, correct?

<p>11:39:47-11:40:43 Page 118</p> <p>1 A. That's correct, and he should have known she was 2 there. 3 Q. So you have no reason to dispute that, that he 4 was not aware she was there? 5 A. That's his testimony. But my opinion is that he 6 should have known she was there. 7 Q. I understand that. But you have nothing in the 8 evidence to dispute the fact that he was not aware she was 9 there? 10 A. That's his testimony. Never saw the Perez 11 vehicle prior to impact. 12 Q. Okay. And you have nothing to support or 13 dispute otherwise? 14 A. No. I don't dispute that at all. 15 Q. Okay. Let me look through my notes real quick, 16 Mr. Nelson, and I will -- 17 A. My name is Nelson. 18 Q. I know that. Look through my notes real quick. 19 And then let's go off the record real briefly; we'll come 20 back on and see if I have anything else to go over with 21 you. 22 A. Okay. 23 THE VIDEOGRAPHER: Going off the record at 24 11:40 a.m. 25 (Recess taken from 11:40 a.m. to 11:44 a.m.)</p>	<p>11:44:40-11:45:35 Page 120</p> <p>1 MR. FINLEY: All right. Mr. Nelson, I 2 appreciate your time and patience with my questions. 3 I'll pass the witness at this time. 4 MR. FISCHER: I have got really just a handful 5 of questions. 6 7 EXAMINATION 8 BY MR. FISCHER: 9 Q. So, Mr. Nelson, if there is more or additional 10 information that is obtained and provided to you would 11 that, if I ask you to review that, would that maybe make 12 you either alter or change your opinions, add opinions, 13 something like that? 14 A. I may have additional opinions but certainly 15 would not change the opinions I have currently. 16 Q. Okay. In regards to the opinions that you have 17 currently is there any kind of individual testing that 18 would be required for you to render those opinions? 19 A. No. In fact I -- 20 MR. FINLEY: Objection; form. 21 THE WITNESS: I testified to Mr. Finley that 22 this case didn't require that type of testing. 23 BY MR. FISCHER: 24 Q. Did it require any type of mathematical 25 calculations for you to render your opinions?</p>
<p>11:43:38-11:44:39 Page 119</p> <p>1 THE VIDEOGRAPHER: We're back on the record at 2 11:44 a.m. 3 BY MR. FINLEY: 4 Q. All right. Mr. Nelson, with regards to the 5 opinions you've offered in this case, none of them, as I 6 understand it today, have been tested, correct, in terms 7 of independent testing? 8 A. Correct. 9 Q. Okay. The opinions you're offering in this 10 case, Mr. Nelson, are contained entirely in the report 11 you've offered in this case? 12 A. So far, yes. 13 Q. Okay. You say so far. 14 Do you have any plans as of now or have you made 15 any changes to those opinions? 16 A. I have neither, no plans nor have I made any 17 change. 18 Q. You haven't been asked to make any changes to 19 them, correct? 20 A. Right. 21 Q. Okay. Mr. Nelson, are you planning on 22 testifying at the trial of this case if there is one? 23 A. You betcha. 24 Q. And by that I mean live at trial. 25 A. Yes.</p>	<p>11:45:38-11:46:32 Page 121</p> <p>1 A. Not from me, no. 2 MR. FINLEY: Objection to form. 3 BY MR. FISCHER: 4 Q. Did, in rendering your opinions were you -- did 5 you need to review medical records? 6 A. No. 7 Q. Did you need to conduct any type of independent 8 experiments in order to render your opinions? 9 A. No, sir. 10 Q. Did you need to get into an exemplar truck to 11 render your opinions in this particular case? 12 MR. FINLEY: Objection; form. 13 THE WITNESS: I didn't need to. 14 BY MR. FISCHER: 15 Q. Have you done -- have you actually operated 16 trucks that are the same or similar to this particular 17 truck, or have you gotten in this type of truck or same or 18 similar truck in the past? 19 A. Yes. 20 MR. FINLEY: Form. 21 BY MR. FISCHER: 22 Q. Okay. In regards to your testimony list that we 23 looked at earlier, it looks like there are at least 24 two cases around 2018 where you were identified as an 25 expert in the Western District of Texas. Is that correct?</p>

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1 A. Probably.
2 Q. Okay. And, in looking at your resumé, you've
3 been doing consulting work since you left the Arizona
4 State Patrol in 1985. Is that right?
5 A. Yes, sir.
6 Q. And in that time that you've done consulting
7 work have you consulted with trucking companies and looked
8 over their entire practice, whether it's hiring practice,
9 the training of drivers, that kind of thing?
10 A. Yes, sir.
11 Q. And is that, is that something that you continue
12 to do today and you would if you were asked?
13 A. I don't usually do that now, but if I'm asked I
14 could certainly go into a trucking company and evaluate
15 their operation and advise them in terms of their
16 compliance with regulations and their safe operation
17 mechanism.
18 Q. And is it your experience over the last 35 years
19 in dealing with the regulations, the commercial driver's
20 license manual, is that what you base your opinions on
21 that you've rendered in this matter today?
22 A. Yes.
23 Q. And is that the, the same or similar sort of
24 approach that other individuals in your field take when
25 rendering opinions, as far as you know?

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1 MR. FINLEY: Objection; form.
2 THE WITNESS: Other experts in my field usually
3 take the same position and perform the same analysis work
4 concerning regulation compliance and vehicle operation.
5 MR. FISCHER: Okay. Mr. Nelson, thank you very
6 much. I'm going to reserve the rest of mine.
7
8 FURTHER EXAMINATION
9 BY MR. FINLEY:
10 Q. Briefly, Mr. Nelson, in follow-up. I know that
11 you testified you didn't believe the need, or see the
12 need, in your opinion, to do math calculations, correct?
13 A. Correct.
14 Q. All right. You're saying that you did not see
15 the need, your testimony was, to get in an exemplar truck.
16 Is that correct?
17 A. That's correct. Because I have done it so much
18 in the past that I don't need to do that.
19 Q. Okay. So the bottom line, though, is that you
20 didn't do either one of those.
21 You did not perform speed calculations in this
22 case?
23 A. I wasn't asked to reconstruct the accident.
24 Q. Okay. You did not inspect or measure the truck
25 involved in the accident or an exemplar truck, correct?

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1 A. In terms of in relation to this case?
2 Q. Yes, sir. Your opinions in this case.
3 A. That's correct.
4 Q. All right. You did not inspect the scene of the
5 accident, correct?
6 A. Well, not specifically. I may have gone through
7 there at some point in my life, but not specifically for
8 this case.
9 Q. Sure. And you did not inspect the vehicle
10 driven by Ms. Perez, correct?
11 A. That's correct.
12 MR. FINLEY: All right. Mr. Nelson, I
13 appreciate your time.
14 I will reserve the rest of our questions for
15 trial.
16 MR. FISCHER: Reserve the rest of mine.
17 THE VIDEOGRAPHER: We will go off the record at
18 11:49 a.m. This ends the deposition of Kerry Nelson.
19 (The deposition concluded at 11:49 a.m.)
20
21
22 (Signature Waived.)
23 _____
24 KERRY V. NELSON
25

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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.
3
4 BE IT KNOWN that the foregoing deposition was
5 taken before me, KAREN L. LOCKER, RPR, Certified Reporter
6 No. 50821 for the State of Arizona, and by virtue thereof
7 authorized to administer an oath; that the witness before
8 testifying was duly sworn by me to testify to the whole
9 truth; deposition review and signature was not requested;
10 that the questions propounded by counsel and the answers
11 of the witness thereto were taken down by me in shorthand
12 and thereafter transcribed into typewriting under my
13 direction; that the foregoing pages contain a full, true,
14 and accurate transcript of all proceedings and testimony
15 had, all to the best of my skill and ability.
16 I FURTHER CERTIFY that I am not related to nor
17 employed by any of the parties hereto and have no interest
18 in the outcome thereof.
19 DATED at Phoenix, Arizona, this 6th day of May,
20 2020.
21
22
23
24 _____
25 KAREN L. LOCKER, RPR
Certified Court Reporter No. 50821

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